

No. 15006

United States
Court of Appeals
for the Ninth Circuit

JOHN FOSTER DULLES, as Secretary of State,
Appellant,

vs.

QUAN YOKE FONG,
Appellee.

Transcript of Record

Appeal from the United States District Court for the
Southern District of California,
Central Division.

FILED

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PAUL P. O'BRIEN, CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

Attorney for Appellant:

LAUGHLIN E. WATERS,
U. S. Attorney,
600 Federal Building,
Los Angeles 12, California.

Attorney for Appellee:

KATHLEEN PARKER,
350 North Sycamore Avenue,
Los Angeles 36, California.



In the District Court of the United States in and
for the Southern District of California, Central
Division

No. 14963-T

QUAN YOKE FONG,

Plaintiff,

vs.

DEAN ACHESON, as United States Secretary of
State,

Defendant.

PETITION TO ESTABLISH NATIONALITY
OF THE UNITED STATES PURSUANT
TO SECTION 903, TITLE 8, U.S.C.A.

Comes now the plaintiff above named, and for
cause of action alleges as follows:

I.

That plaintiff was born on February 13, 1930
(CR 19-1-15) at Kowkwong City, Kwangtung,
China.

II.

That plaintiff is the son of Quan Lun Hong, also
known as Tommy Quan, a citizen of the United
States, now residing in Los Angeles, California; that
said Quan Lun Hong, also known as Tommy Quan,
was married to Gee Bo Yoke, in Ping On Village,
Kowkwong, China, on or about July 29, 1921
(CR 10-6-25); that plaintiff is the lawful issue of
said marriage; that Quan Lun Hong, also known
as [2*] Tommy Quan, was a citizen of the United

*Page numbering appearing at foot of page of original Certified
Transcript of Record.

States at the time of plaintiff's birth and has lived and resided in the United States since May, 1915, at which time said Quan Lun Hong, also known as Tommy Quan, was admitted to the United States by the United States Immigration and Naturalization Service as a citizen of the United States; that plaintiff's father, Quan Lun Hong, also known as Tommy Quan, resides in the City of Los Angeles, County of Los Angeles, State of California; that plaintiff claims residence in said City of Los Angeles, State of California, the home of plaintiff's father and in the jurisdiction of this Court; that because of his birth as above alleged, plaintiff claims to be a citizen of the United States pursuant to Section 1993, Revised Statutes of the United States, and entitled to the rights and privileges of a citizen of the United States, including the right to enter and remain in the United States as a citizen thereof.

III.

That plaintiff heretofore filed an application for an American passport or other travel document as a citizen of the United States with the American Consulate General at Hong Kong, China, an agency of the United States State Department, and under the jurisdiction, management and direction of defendant, Dean Acheson, Secretary of State of the United States, for the purpose of traveling to the United States to join his father, Quan Lun Hong, also known as Tommy Quan, at the family home provided by his said father in Los Angeles, California; that the American Consulate General at Hong

ong has refused to issue to plaintiff the passport applied for, thereby denying plaintiff's American citizenship and his rights and privileges as a citizen of the United States.

IV.

That plaintiff has at all times herein mentioned claimed [3] and now claims the right and privilege as a national of the United States of America to enter, stay and remain and reside permanently in the United States as a citizen thereof, but that the said defendant has denied and continues to deny such rights and privileges to the plaintiff upon the ground that he is not a national of the United States.

V.

That plaintiff having been denied his rights as herein above alleged, now brings this action in good faith pursuant to the provisions of Section 903, Title 8, U.S.C.A., also known as Section 503 of the Nationality Act of 1940.

Wherefore, plaintiff respectfully prays that judgment of this Honorable Court be entered declaring him to be a national of the United States and entitled to the rights and privileges of a citizen of the United States, and for such other and further relief as to the Court may seem just and proper.

/s/ KATHLEEN PARKER,
Attorney for Plaintiff.

[Endorsed]: Filed December 23, 1952. [4]

[Title of District Court and Cause.]

ANSWER

Comes Now the defendant, Dean Acheson, a United States Secretary of State, by and through his attorneys, Walter S. Binns, United States Attorney for the Southern District of California, Clyde C. Downing and Leila F. Bulgrin, Assistant United States Attorney for the Southern District of California, and in answer to plaintiff's petition on file herein, admits, denies and alleges as follows

I.

Answering Paragraph 1, the defendant alleges he is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in said Paragraph, and therefore denies generally and specifically every part thereof

II.

Answering Paragraph II, the defendant denies that Quan Lun Hong, also known as Tommy Quar, was at any time a citizen of the United States, or that he was admitted to the United States at any time as a citizen by the United States [5] Immigration and Naturalization Service.

Further answering Paragraph II, the defendant alleges that he is without knowledge or information sufficient to form a belief as to the truth or falsity of all other allegations contained in said Paragraph and therefore denies generally and specifically the same and every part thereof.

III.

Answering Paragraphs III, IV and V, the defendant denies generally and specifically each and every allegation contained therein.

Further answering said Paragraphs, defendant denies that the plaintiff is, or ever has been, a citizen of the United States, or entitled to any rights or privileges as such.

For a Further, Second and Separate Defense to Plaintiff's Petition, Defendant Alleges:

I.

The petition of plaintiff herein fails to state a claim upon which relief can be granted.

Wherefore, defendant prays for a judgment dismissing said petition and denying the relief prayed for therein.

WALTER S. BINNS,
United States Attorney;

CLYDE C. DOWNING,
Assistant U. S. Attorney,
Chief of Civil Division;

/s/ LEILA F. BULGRIN,
Assistant U. S. Attorney,
Attorneys for Defendant.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed April 8, 1953. [6]

[Title of District Court and Cause.]

MINUTES OF THE COURT

MARCH 21, 1955

Young John, et al. vs. John Foster Dulles, etc.-
No. 13,690-HW Civil.

Chin Wah Ben, et al. vs. John Foster Dulles, etc.-
No. 14,820-HW Civil.

Lee Suie Wah vs. John Foster Dulles, etc.-
No. 14,962-HW Civil.

Quan Yoke Fong vs. John Foster Dulles, etc.-
No. 14,963-HW Civil.

Joy Fook Look vs. John Foster Dulles, etc.-
No. 14,972-HW Civil.

Hom Ing Chuey vs. John Foster Dulles, etc.-
No. 14,975-HW Civil.

Lew Yook Kong vs. John Foster Dulles, etc.-
No. 15,003-HW Civil.

Fong Nai Lap vs. John Foster Dulles, etc.-
No. 15,005-HW Civil.

Chan Wah Bok, etc., vs. John Foster Dulles, etc.-
No. 15,006-HW Civil.

Hon. Harry C. Westover, District Judge.
Proceedings:

For further proceedings. (Same order in each case):

It Is Ordered that cause is continued to July 11, 1955, 10 a.m., for setting for trial.

EDMUND L. SMITH,
Clerk. [7]

Title of District Court and Cause.]

MOTION TO REQUIRE PARTIES TO FURNISH BLOOD SAMPLE AND UNDERGO BLOOD TESTS

Defendant moves the Court, as authorized by Rule 5 of the Federal Rules of Civil Procedure, for an order requiring Quan Yoke Fong, plaintiff in the above-entitled action, to appear at Hong Kong, C.C., at such time and place or places and to such physician or other persons to be designated by the court, and there to furnish and permit such physician or other persons to take a sample or samples of his blood in sufficient quantities so that such blood may be transported to the United States of America and there be examined and tested by a physician, hematologist, serologist, or other person for blood grouping and type;

Defendant further moves the Court for an Order requiring Quan Lun Hong and Gee Bo Yoke, alleged father and mother respectively, of plaintiff, to appear at Los Angeles, California, at such time and place or places and to such physician or other persons to be designated by the Court, and there to have their blood tested by said physician or other persons for blood grouping and type; and that defendant have such other, further, and different relief as may be proper.

This Motion is based upon and will be presented upon the Affidavit of James R. Dooley annexed hereto, these Motion papers and Memorandum of

Points and Authorities in Support Thereof, together with all of the pleadings, papers, records and documents on file herein.

Dated: This 6th day of May, 1955.

LAUGHLIN E. WATERS,
U. S. Attorney;

MAX F. DEUTZ,
Asst. U. S. Attorney,
Chief of Civil Division;

/s/ JAMES R. DOOLEY,
Assistant U. S. Attorney,
Attorneys for Defendant.

AFFIDAVIT IN SUPPORT OF MOTION TO
REQUIRE PARTIES TO FURNISH
BLOOD SAMPLE AND UNDERGO BLOOD
TESTS

United States of America,
Southern District of California—ss.

James R. Dooley, being first duly sworn, deposes and says:

1. That he is an Assistant United States Attorney for the Southern District of California, and one of the attorneys for the defendant in the above-entitled cause;

2. That said cause is an action for declaration of nationality under Section 503 of the Nationality Act of 1940, 54 Stat. 1171, 8 U.S.C.A. Section 903;

3. That the physical condition of the plaintiff and that of his alleged parents is in controversy in the above-entitled cause, since records in possession of defendant show and defendant contends that the blood group of plaintiff is incompatible with that of his alleged parents;

4. That this Court should order plaintiff to furnish a sample or samples of his blood, and should further order plaintiff's alleged parents to have their blood tested, for the reason that evidence of whether said plaintiff's blood is compatible with that of his alleged parents is essential to a determination of plaintiff's claim to nationality of the United States; since said plaintiff acquired citizenship, if at all, through his alleged father by virtue of Section 1993 of the Revised Statutes of the United States as amended.

5. That upon information and belief plaintiff is now residing in Hong Kong, B.C.C., the Secretary of State having refused to furnish said plaintiff a certificate of identity to travel to the United States pursuant to the discretion conferred upon said Secretary [11] by Section 503 of the Nationality Act of 1940; and that said plaintiff will not be permitted to travel to the United States prior to the trial of this cause.

6. That upon information and belief, the alleged parents of plaintiff are now residing within the Southern District of California, Central Division, and within the jurisdiction of this Court.

/s/ JAMES R. DOOLEY.

Subscribed and sworn to before me this 6th day
May, 1955.

[Seal] EDMUND L. SMITH,
Clerk, U. S. District Court, Southern District of
California,

By /s/ CHARLES E. JONES,
Deputy. [12]

* * *

A proposed Order setting forth suggested details
of obtaining a sample or samples of plaintiff's blood
and transporting it to the United States for exami-
nation and testing, and setting forth details con-
cerning the blood testing of plaintiff's alleged par-
ents will be presented to the Court when this Mo-
tion comes on for hearing.

Respectfully submitted,

LAUGHLIN E. WATERS,
United States Attorney;

MAX F. DEUTZ,
Assistant U. S. Attorney,
Chief of Civil Division;

/s/ JAMES R. DOOLEY,
Assistant U. S. Attorney,
Attorneys for Defendant.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed May 6, 1955. [13]

[Title of District Court and Cause.]

MOTION TO DISMISS

Defendant above named, by and through the undersigned, moves the Court to dismiss the within-action pursuant to Rule 12(b) (1) (6) and Rule 2(h), Federal Rules of Civil Procedure, on the following grounds:

1. This Court lacks jurisdiction over the subject matter of the instant action.
2. The Complaint on file herein fails to state a claim upon which relief can be granted.

This Motion is based upon, and will be presented upon, the affidavit of James R. Dooley, attached hereto as Exhibit A, the certified passport file of Quan Yoke Fong, which will be offered in evidence when this Motion comes on for hearing, a certified statement prepared by the Department of State concerning the processing of applications in Hong Kong, B.C.C., which will be offered in evidence when this Motion comes on for hearing, these Motion papers and Memorandum of Points and Authorities in Support thereof, together with all the records, files, pleadings, papers and documents on file herein.

Dated: This 6th day of May, 1955.

LAUGHLIN E. WATERS,
United States Attorney;

MAX F. DEUTZ,

Assistant U. S. Attorney,
Chief of Civil Division;

/s/ JAMES R. DOOLEY,

Assistant U. S. Attorney,
Attorneys for Defendant.

EXHIBIT A

Affidavit of James R. Dooley

United States of America,
Southern District of California—ss.

James R. Dooley, being first duly sworn, deposes and says:

1. That he is an Assistant United States Attorney in the office of Laughlin E. Waters, United States Attorney for the Southern District of California, and as such is in charge of the files in said office pertaining to the above-captioned matter.

2. That among the aforementioned files of which affiant is in charge are certain documents, duly certified under seal of the Department of State constituting the passport file in the case of Quan Yoke Fong, plaintiff herein.

3. That said passport file in the case of Quan Yoke Fong discloses the following:

a. That on May 13, 1952, plaintiff executed an application for passport before Frank J. Haughey, Vice Consul of the United States at Hong Kong,

B.C.C., in which he claimed to be a citizen of the United States, and in which he sought a passport to travel to the United States.

b. That on November 5, 1952, William A. Mucci, American Vice Consul at Hong Kong, B.C.C., recommended that the Department of State disapprove plaintiff's application for passport, and that on the same date said recommendation was concurred in by H. E. Montamat, American Consul.

c. That by Cable No. A-463, dated January 6, 1953, the Passport Office, Department of State, instructed the American Consulate General, Hong Kong, B.C.C., that the passport application of plaintiff was disapproved.

d. That said passport file does not show a disapproval of [21] plaintiff's application for passport prior to January 6, 1953.

/s/ JAMES R. DOOLEY.

Subscribed and sworn to before me, this 6th day of May, 1955.

[Seal] EDMUND L. SMITH,
Clerk, U. S. District Court, Southern District of
California,

By /s/ CHARLES E. JONES,
Deputy.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed May 6, 1955. [22]

[Title of District Court and Cause.]

MINUTES OF THE COURT
MAY 16, 1955

Hon. Harry C. Westover, District Judge.

Proceedings:

For hearing (1) motion of defendant, filed May 6, 1955, to dismiss; (2) motion of defendant, filed May 6, 1955, to require the parties to furnish samples of their blood and undergo blood tests.

Attorney Dooley argues in support of said motions.

Attorney Parker makes a statement.

Court Orders motion (1) of defendant to dismiss Denied.

Deft's Ex. A and B are admitted in evidence.

Court Orders motion (2) of defendant Granted

It Is Ordered that trial is set for May 31, 1955
10 a.m.

EDMUND L. SMITH,
Clerk. [24]

[Title of District Court and Cause.]

ORDER REQUIRING PARTIES TO FURNISH
BLOOD SAMPLE AND UNDERGO BLOOD
TESTS

The above-entitled matter came on for hearing upon defendant's Motion to Require Parties to Fur

ish Blood Sample and Undergo Blood Tests on May 16, 1955, in the above-entitled Court before the Honorable Harry C. Westover, Judge Presiding, the plaintiff being represented by his attorney, Kathleen Parker, and the defendant being represented by his attorneys, Laughlin E. Waters, United States Attorney; Max F. Deutz and James R. Dooley, Assistant United States Attorneys, by James R. Dooley; and the Court having considered defendant's Motion, the Affidavit of James R. Dooley annexed thereto, together with all of the pleadings, papers, records, documents and proceedings in this cause; and it appearing to the Court that plaintiff should be required to furnish a sample or samples of his blood and that the alleged parents of plaintiff should be required to undergo blood tests, since evidence of whether plaintiff's blood is compatible with that of his alleged parents is essential to a determination of his claim to nationality of the [25] United States; and it appearing to the Court that plaintiff is now residing in Hong Kong, B.C.C., and that plaintiff will not be able to travel to the United States prior to the trial of this cause; and it further appearing to the Court that plaintiff's alleged parents are now residing within the Southern District of California, Central Division, and within the jurisdiction of this Court, and good cause appearing therefor;

Now, Therefore, It Is Ordered:

1. That plaintiff, Quan Yoke Fong, present himself on the 9th day of June, 1955, at 10:00 o'clock

a.m., at the office of the American Consulate General, 580 Garden Road, Hong Kong, B.C.C., where he will be directed to the office of Dr. L. T. Ride Vice Chancellor, Hong Kong University, and there to furnish and permit said doctor to take a sample or samples of his blood in sufficient quantities so that such blood may be transported to the West Coast Medical Laboratories, 610 South Broadway, Los Angeles, California, for examination and testing for blood grouping and type; and that plaintiff identify himself at the time a sample or samples of his blood is taken by acknowledging in writing that he has presented himself as ordered by this Court.

2. That in the event plaintiff has not received notice of this Order by the 9th day of June, 1955, that plaintiff then present himself at the time and place as aforesaid on the 16th day of June, 1955.

3. That Quan Lun Hong and Gee Bo Yoke, alleged father and mother, respectively, of plaintiff, present themselves on the 9th day of June, 1955, at 10:00 o'clock a.m., at West Coast Medical Laboratories, 610 South Broadway, Suite 713, Los Angeles, California, and there to permit Albert L. Blifeld, a clinical laboratory technician licensed by the State of California, or other qualified official, agent, or employee of said laboratories, to test their blood for grouping and/or type; and that the alleged parents of [26] plaintiff identify themselves at the time of such testing by furnishing their names and ad-

resses and by acknowledging in writing that they are presenting themselves pursuant to this Order.

4. That counsel for plaintiff notify plaintiff and his alleged parents of the contents of this Order with all possible dispatch and request that plaintiff and his alleged parents present themselves at the respective times and places as aforesaid.

5. That counsel for defendant send a copy of this order to the American Consulate General, Hong Kong, B.C.C., and request that a copy of said Order be served upon the plaintiff by a consular official.

Dated: This 10th day of May, 1955.

/s/ HARRY C. WESTOVER,
Judge, U. S. District Court.

Approved as to form:

/s/ KATHLEEN PARKER,
Attorney for Plaintiff.

LAUGHLIN E. WATERS,
United States Attorney;

MAX F. DEUTZ,
Assistant U. S. Attorney,
Chief, Civil Division;

/s/ JAMES R. DOOLEY,
Assistant U. S. Attorney,
Attorneys for Defendant.

[Endorsed]: Filed May 17, 1955. [27]

quence, affiant was unable to test this blood sample for blood grouping or type.

4. That affiant has recently examined several blood samples shipped from Hong Kong, B.C.C., and in all cases except the sample mentioned above and a sample in the case of Young John, has found the blood samples in good condition, and has tested these samples for grouping and type; and that affiant is at a loss to understand why the blood samples in the cases of Quan Yoke Fong and Young John had hemolyzed and could not be tested.

5. That on June 9, 1955, affiant tested for grouping and type the blood of Quan Lun Hong and Gee Bo Yoke, who I am informed are the alleged parents of Quan Yoke Fong. [31]

/s/ ALBERT L. BLIFELD,
Affiant.

Subscribed and sworn to before me this 1st day of July, 1955.

[Seal /s/ JAMES R. DOOLEY,
Notary Public.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed July 1, 1955. [32]

[Title of District Court and Cause.]

AFFIDAVIT OF QUAN LUN HONG

State of California,
County of Los Angeles—ss.

Quan Lun Hong, being duly sworn, deposes and says:

That he resides at 1600 Boylston, Los Angeles, California, and is a citizen of the United States; that he is the father of Quon Yoke Fong, the plaintiff herein.

That in compliance with the order of this Court, affiant and his wife, Gee Bo Yoke, submitted to a blood test; that affiant mailed to his son, Quan Yoke Fong, a copy of the order of this Court directing said Quan Yoke Fong to submit to a blood test; that hereafter, affiant and his wife received a letter, dated June 17, from Quan Yoke Fong, said letter being written and signed in the handwriting of said Quan Yoke Fong, stating that he had been to the [36] American Consulate, had submitted to the blood test and had paid Dr. Eric Vio the sum of 256.00 Hong Kong currency and \$4.00 United States currency; that said letter, together with a certified translation thereof is attached hereto, marked Exhibit "A."

That upon receipt of said letter, affiant wrote his son, Quan Yoke Fong, requesting him to obtain a statement from said doctor as to the sum paid him

in connection with the blood test; that thereafter, affiant and his wife received a letter dated July 6, from Quan Yoke Fong, which letter was written and signed in the handwriting of Quan Yoke Fong, with which was enclosed an itemized statement totaling \$256.00 on the letterhead of Dr. Eric Vio, together with a receipt in the amount of \$108.40; that said letter, together with the statment and receipt, are attached hereto, marked Exhibit "B."

/s/ QUAN LUN HONG.

Subscribed and sworn to before me this 16th day of July, 1955.

[Seal] /s/ BILLY W. LEW,
Notary Public in and for the County of Los Angeles, State of California.

My commission expires Feb. 7, 1959. [37]

EXHIBIT "A"-2

Dear Father and Mother:

I have received the documents you sent me last week. Please do not worry about it. I have been to the American Consulate to take care of things and have followed their order of procedure. They have already took a sample of my blood and send it to the United States. A fee of \$256.00 (Hong Kong

urrency) and \$4.00 (U. S. currency) was paid to Dr. Eric Vio. I hope to be able to go over soon. Business is slow. How is Brother Hang Fong doing in school? Please let me know. I am in good health and hope both of you and brother would take good care of yourselves.

Your son,

/s/ YOKE FONG.

June 17 Evening

This is a true and correct translation of a letter sent by Yoke F. Kwan, 3 Cheong Ming Street, Race Course, Hong Kong, to Mrs. Thomas Quan, 1600 N. Boyleston Street, Los Angeles 12, California, postmarked "Kowloon, Hong Kong, 18 June, 1955."

/s/ BILLY W. LEW.

Subscribed and sworn to before me this 8th day of July, 1955.

[Seal] /s/ ALBERT L. HING,
Notary Public, in and for the County of Los Angeles, State of California.

My commission expires August 26, 1955. [39]

EXHIBIT "B"-2

[Letterhead]

Dr. Eric Vio Dr. J. Carey-Hughes Dr. J. M. Park

[Addresses, etc.]

Mr. Quan Yoke Fong

To:

Messrs. Deacons (Solicitor-

Mr. Armstrong)	HK \$100.00
Pan American Airways	HK \$ 41.60
Stamp duty	HK \$ 6.00
Dr. E. Vio	HK \$108.40

 HK \$256.00

Also US \$4.00 for the American Consulate General for fixing the documents.

Total: HK \$256.00 and US \$4.00.

[Receipt]

Drs. Eric Vio, J. Carey-Hughes & J. M. Park

No. 004495

6th July, 1955.

Received from Mr. Quan Yoke Fong, the sum of Dollars One Hundred and Eight and Cents Forty. For Professional Services, etc., rendered as per Bill No.....
\$108.40.

/s/ [Indistinguishable.]

[Fifteen cent Hong Kong Stamp dated 6/7/55 attached.] [42]

EXHIBIT "B"-3

Dear Father and Mother:

I have received your letter and \$200.00 yesterday. Will you please don't worry about it. I am including a receipt which is given by the doctor who took a sample of my blood last time. I wish I can go over soon. On your last letter stated that the younger brother is on summer vacation for over a week already. Will you please don't let him waste all valuable time, keep him review his lesson always. I am also review my lessons very often in Hong Kong. How are you in the States? Hoping you let me know more about you.

Your son,

/s/ YOKE FONG.

July 6.

This is a true and correct translation of a letter sent by Yoke Fong, South East Asia Film Co., 580A Nathan Road, 5th fl. Kowloon, to Mr. and Mrs. Thomas Quan, 1600 N. Boylston Street, Los Angeles 12, California, U.S.A., postmarked "Yau Ma Tei, Hong Kong, July 7, 1955."

/s/ HUAN LIN CHENG.

Subscribed and sworn to before me this 16th day of July, 1955.

[Seal] /s/ BILLY W. LEW,
Notary Public in and for the County of Los Angeles, State of California.

My commission expires Feb. 7, 1959.

[Endorsed]: Filed July 18, 1955. [43]

[Title of District Court and Cause.]

MINUTES OF THE COURT
JULY 18, 1955

Hon. Harry C. Westover, District Judge.

Proceedings:

For hearing motion of defendant, filed July 1, 1955, for supplemental order to require plaintiff to furnish blood sample.

Each of Attorneys Davis and Parker, respectively, makes a statement.

It Is Ordered that cause as to said motion stand Submitted.

JOHN A. CHILDRESS,
Clerk. [44]

[Title of District Court and Cause.]

AFFIDAVIT

United States of America,
Southern District of California—ss.

James R. Dooley being first duly sworn, deposes and says:

1. That he is an Assistant United States Attorney in the office of Laughlin E. Waters, United States Attorney for the Southern District of Cali-

ornia, and as such is in charge of the files in said office pertaining to the above-captioned matter.

2. That on July 19, 1955, the said United States Attorney for the Southern District of California sent a telegram to the Department of Justice, Washington, D. C., requesting that arrangements be made to reimburse the above-named plaintiff, and other plaintiffs, for expenses incurred by them in furnishing blood samples pursuant to Court order.

3. That on July 21, 1955, the said United States Attorney sent a letter to the Department of Justice, Washington, D. C., [45] requesting that arrangements be made to reimburse the above-named plaintiff, and other plaintiffs, for expenses incurred by them in furnishing blood samples pursuant to Court order.

4. That on July 27, 1955, there was received in the office of the United States Attorney for the Southern District of California from the Department of Justice, Washington, D. C., a telegram, which read as follows:

“Litigator July 21 Young John et al v. Dulles, Civil No. 13690-HW. Please submit Form 25B to Mr. Andretta for Authorization to Reimburse Plaintiffs in This Case and in Quan Yoke v. Dulles, No. 14963-HW. This Procedure Suggested in Other Cases of Similar Nature. State Department Arranging for Consul General at Hong Kong to Forward Bills Directly Your Office in Future Cases.”

5. That Form 25B is the standard form used in the Department of Justice for requesting authorization to incur expenses in connection with litigation; and that Mr. S. A. Andretta is Administrative Assistant Attorney General to whom such forms are customarily submitted.

6. That the United States Attorney for the Southern District of California has submitted to the said Mr. S. A. Andretta Form 25-B in connection with the expenses incurred by plaintiff, Quan Yoke Fong, in the amount of \$256.00 Hong Kong currency and \$4.00 U. S. currency, and affiant knows of no reason why plaintiff should not eventually be reimbursed for these expenses.

7. That on August 12, 1955, there was received in the office of the United States Attorney for the Southern District of [46] California a telegram from the American Consulate General, Hong Kong, B.C.C., stating that a blood sample of Quan Yoke Fong was arriving at Los Angeles on August 15, 1955.

8. That affiant checked with West Coast Medical Laboratories on August 15, 1955, and a blood sample of Quan Yoke Fong was received by said establishment on August 15, 1955. That affiant was informed by West Coast Laboratories on August 16, 1955, that this blood sample had been tested for grouping and type.

9. That affiant does not know the reason or circumstances under which the blood sample of Quan

Yoke Fong, which was received by West Coast Medical Laboratories on August 15, 1955, was taken.

/s/ JAMES R. DOOLEY.

Subscribed and sworn to before me this 16th day of August, 1955.

[Seal] JOHN A. CHILDRESS,
Clerk, U. S. District Court, Southern District of
California.

By /s/ WAYNE E. PAYNE,
Deputy.

[Endorsed]: Filed August 16, 1955. [47]

[Title of District Court and Cause.]

MEMORANDUM

This action was filed on December 22, 1952. At the time the petition was filed plaintiff was in Hong Kong, and defendant refused to grant plaintiff a travel document to enable him to come to the United States to testify at the time of trial.

On May 6, 1955—twenty-nine months after the petition was filed—defendant filed a motion to require plaintiff and his alleged parents to furnish samples of blood for the purpose of examination to determine whether the blood of plaintiff was compatible with that of the asserted parents. On motion

being heard, this Court made its order which read in part as follows: [48]

“Now, Therefore, It Is Ordered:

“1. That plaintiff, Quan Yoke Fong, present himself on the 9th day of June, 1955, at 10:00 o'clock a.m., at the office of the American Consulate General, 580 Garden Road, Hong Kong, B.C.C., where he will be directed to the office of Dr. L. T. Ride Vice Chancellor, Hong Kong University, and there to furnish and permit said doctor to take a sample or samples of his blood in sufficient quantities so that such blood may be transported to the West Coast Medical Laboratories, 610 South Broadway Los Angeles, California, for examination and testing for blood grouping and type; * * *”

Apparently in compliance with the foregoing order of May 17, 1955, plaintiff presented himself at the office of the American Consulate General, 580 Garden Road, Hong Kong, B.C.C., but was directed to the office of Dr. Eric Vio, 315 Hong Kong and Shanghai Bank Building, Hong Kong, China, there to submit himself for the purpose of giving to the government a sample of blood as directed by order of this Court. Plaintiff was required to pay to Dr. Vio \$256.00, Hong Kong currency, plus \$4.00 American currency to the American Consulate General.

After Dr. Vio took the sample from plaintiff it was shipped to the West Coast Medical Laboratories, Inc., in Los Angeles, California, but upon ex-

mination there it was discovered the blood sample had completely hemolyzed. Thereupon the government presented to this Court a motion that plaintiff be required to submit himself for another sample of his blood. [49]

When the government made its original motion for a blood sample, the Court was of the opinion that the costs entailed would be borne by the government, as the blood sample was requested by defendant. Not only did the plaintiff have to pay the doctor for taking the sample, but also there was a charge of \$4.00 American money, made by the American Consulate General for preparation of the necessary documents in connection therewith.

The government failed to comply with the order of Court as made. The order definitely specified that plaintiff was to present himself at the office of the American Consulate General, and there he was to be directed to the office of Dr. L. T. Ride, Vice Chancellor, Hong Kong University, who has heretofore obtained blood from many Chinese applicants seeking to be admitted into the United States as children of American citizens. The American Consulate General evidently directed plaintiff to the office of Dr. Vio—a doctor unknown to this Court.

If Dr. Vio was careless or negligent in taking and shipping the blood sample in question, that carelessness or negligence cannot be imputed to plaintiff, for plaintiff complied in all respects with the Court's order. The government is requesting that

the decision of this case be delayed for some months in order that another blood sample may be obtained.

This matter has been pending in the Court since December, 1952. Nearly three years have elapsed since plaintiff filed his action. If plaintiff has any legitimate claim, it should be passed upon. It should, in fact, have been passed upon before now. [50]

At the time of trial the mother and father of plaintiff appeared in Court, and each testified plaintiff was their son. Had there not been a request by defendant that plaintiff and the parents furnish a blood sample, the Court would have rendered judgment for plaintiff from the bench at the conclusion of the trial, as the testimony of a mother undoubtedly is the best evidence obtainable relative to the paternity and birth of her child. The government filed its motion requesting blood samples just prior to trial.

Judgment at the time of trial was delayed because of the blood sample request. The matter was submitted to the Court on the evidence presented at the trial. The Court is satisfied with the testimony of the witnesses in this case, which testimony in the Court's opinion establishes plaintiff's claim that he is the son of an American citizen. The Court does not feel constrained to continue the matter further.

The motion for supplemental order relative to furnishing by plaintiff of another blood sample is

denied, and the Court now orders judgment in favor of plaintiff.

Dated this 16th day of August, 1955.

/s/ HARRY C. WESTOVER,
United States District Judge.

[Endorsed]: Filed August 16, 1955. [51]

[Title of District Court and Cause.]

MINUTES OF THE COURT
AUGUST 16, 1955

Hon. Harry C. Westover, District Judge.

Proceedings:

Filed affidavit of respondent re blood samples.

Court denies U. S. Attorney's motion for supplemental order and finds for plaintiff; attorney for plaintiff to prepare findings and judgment.

JOHN A. CHILDRESS,
Clerk. [52]

[Title of District Court and Cause.]

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

The above-entitled cause came on regularly to be heard in the above-entitled Court on June 1, 1955,

before the Honorable Harry C. Westover, Judge Presiding, Kathleen Parker appearing as attorney for the plaintiff, Quan Yoke Fong, and Laughlin E. Waters, United States Attorney, and Max F. Deutz, Assistant United States Attorney, by James R. Dooley, Assistant United States Attorney, appearing as attorneys for defendant John Foster Dulles, Secretary of State of the United States of America; and evidence, both oral and documentary, having been introduced and the cause having been argued and submitted for decision, the Court now makes its findings of fact and conclusions of law as follows: [53]

Findings of Fact

I.

That plaintiff, Quan Yoke Fong, was born on February 13, 1930 (CR 19-1-15) at Kowkwong City, Kwangtung, China.

II.

That plaintiff's father is Quan Lun Hong, also known as Tommy Quan; that said Quan Lun Hong is a citizen of the United States; that plaintiff's mother is Gee Bo Yoke; that plaintiff's father, Quan Lun Hong, married said Gee Bo Yoke in Ping On Village, Kowkwong, China, on July 29, 1921 (CR 10-6-25); that plaintiff is the lawful issue of said marriage; that plaintiff's father, Quan Lun Hong, was a citizen of the United States at the time of the birth of plaintiff, Quan Yoke Fong, and that said Quan Lun Hong lived and resided in the United States from a time prior to the date of plain-

tiff's birth; that plaintiff's place of residence is Los Angeles, County of Los Angeles, State of California.

III.

That defendant John Foster Dulles is the duly qualified Secretary of State of the United States of America and is executive head of the United States Department of State and of the United States Consular Service.

IV.

That plaintiff, Quan Yoke Fong, has at all times herein mentioned claimed to be a citizen and national of the United States of America, and claimed the right to enter, stay, remain and reside permanently in the United States as a national and citizen thereof; that on May 13, 1952, plaintiff, Quan Yoke Fong, executed and filed with the American Consul at Hong Kong, B.C.C., China, an application for an American passport; that prior to the date of [54] the filing of the complaint herein no action had been taken by the American Consul on said application; that the delay in acting thereon was unreasonable and the failure to act on said passport application within a reasonable time was a denial of plaintiff's rights and privileges as a national and citizen of the United States by defendant through his agents and subordinates.

Conclusions of Law

Upon the foregoing findings of fact, the Court concludes:

I.

That Quan Yoke Fong is, and since his birth on February 13, 1930 (CR 19-1-15) has been, a national and citizen of the United States of America.

The clerk is ordered to enter judgment.

Dated: September 2, 1955.

/s/ HARRY C. WESTOVER,
United States District Judge.

Lodged August 22, 1955.

[Endorsed]: Filed September 2, 1955. [55]

United States District Court, Southern District
of California, Central Division

No. 14963-HW

QUAN YOKE FONG,

Plaintiff,

vs.

JOHN FOSTER DULLES, as Secretary of State,

Defendant.

JUDGMENT DETERMINING
AMERICAN CITIZENSHIP

The above-entitled matter having come on for trial on June 1, 1955, before the Honorable Harry C. Westover, Judge Presiding, Kathleen Parker appearing as attorney for plaintiff, and Laughlin E. Waters, United States Attorney, and Max F. Deutz,

Assistant United States Attorney, by James R. Dooley, Assistant United States Attorney, appearing as attorneys for defendant, the said defendant having filed an answer to the complaint, and the Court having heard the testimony of the witnesses and considered the evidence, both oral and documentary, together with arguments of counsel for the respective parties, and being fully advised in the premises and having made its findings of fact and conclusions of law, [57]

It Is Hereby Ordered and Adjudged that Quan Yoke Fong, the plaintiff herein, is a national and citizen of the United States of America.

Dated: September 2, 1955.

/s/ HARRY C. WESTOVER,
United States District Judge.

Receipt of Copy Acknowledged.

Lodged August 22, 1955.

[Endorsed]: Filed September 2, 1955.

Docketed and Entered Sept. 2, 1955. [58]

Title of District Court and Cause.]

MOTION FOR NEW TRIAL

The defendant moves the Court for an Order granting a new trial in the above-entitled action in which judgment was entered on September 2, 1955, on the following grounds:

1. Newly-discovered evidence (in a form which is admissible), material for the defendant, which the defendant could not with reasonable diligence have discovered and produced at the trial.

2. Newly-obtained evidence (in a form which is admissible), material for the defendant, which the defendant could not with reasonable diligence have obtained and produced at the trial.

3. Manifest error of fact in the Court's Finding of Fact that Quan Yoke Fong is the lawful issue of Quan Lun Hong.

4. Manifest error of law in the Court's Conclusion of Law that Quan Yoke Fong is a national and citizen of the United States of America.

This Motion is based upon and will be presented upon Exhibits A through F attached hereto, these Motion papers and Memorandum of Points and Authorities in support thereof, together with all the records and files herein.

Dated: This 9th day of September, 1955.

LAUGHLIN E. WATERS

United States Attorney;

MAX F. DEUTZ,

Assistant U. S. Attorney,

Chief of Civil Division;

/s/ JAMES R. DOOLEY,

Assistant U. S. Attorney,

Attorneys for Defendant.

EXHIBIT A

Affidavit of James R. Dooley

United States of America,
Southern District of California—ss.

James R. Dooley, being first duly sworn, deposes
and says:

That he is an Assistant United States Attorney
for the Southern District of California, and one of
the attorneys for the defendant in the above-en-
titled cause;

That the within action was tried before the Hon.
Harry C. Westover on the 1st day of June, 1955,
and resulted in a judgment being rendered in favor
of the plaintiff and against the defendant adjudging
that plaintiff, Quan Yoke Fong, is a national and
citizen of the United States of America.

That since the time of said trial, evidence in a
form which is admissible has become available,
which affiant believes to be of great importance to
defendant, and which, if shown at the trial herein
would have been of decisive character in defense
against plaintiff's claim.

That the aforementioned evidence shows, based
upon blood tests made of plaintiff and his alleged
parents that it is not possible for plaintiff to be the
child of his alleged father, Quan Lun Hong (re-
ferred to in Exhibits "B" and "C" as Lun Hong
Quan); and that consequently, it was not possible
for plaintiff to have acquired citizenship of the

United States through said Quan Lun Hong, as plaintiff claimed and as this Court found.

That this evidence consists of the following:

- a. The testimony of Albert A. Blifeld, clinical laboratory technician, employed by West Coast Medical Laboratories, Inc., who tested the blood of plaintiff and that of his alleged parents, and whose affidavit is attached hereto as Exhibit "B"; [63] together with all documents and other tangible things in possession of West Coast Medical Laboratories relating to such tests.
- b. The testimony of Doctor Michael A. Rubinstein, hematologist, who evaluated the results of the blood tests made by the aforementioned Albert A. Blifeld, and who concluded that it was not possible for Quan Lun Hong (Lun Hong Quan) to be the blood father of Quan Yoke Fong. His affidavit is attached hereto as Exhibit "C."
- c. The affidavit of Dr. Eric Vio, exemplified under the seal of the American Consulate General, Hong Kong, B.C.C., concerning the drawing of a blood sample from plaintiff, Quan Yoke Fong, and concerning the shipment of said sample to West Coast Medical Laboratories. This affidavit is attached hereto as Exhibit "D."
- d. The affidavit of plaintiff, Quan Yoke Fong, exemplified under the seal of the American Consulate General, Hong Kong, B.C.C., concerning the drawing of samples of his blood, hereto attached as Exhibit "E."

e. The affidavit of Leo J. Moser, Vice Consul of the United States of America, bearing the seal of the American Consulate General, Hong Kong, B.C.C., concerning the drawing of blood samples from plaintiff, Quan Yoke Fong, hereto annexed as Exhibit "F."

That the defendant could not with reasonable diligence have obtained and produced the aforementioned evidence at the trial of this action for the following reasons:

a. The plaintiff, Quan Yoke Fong, has at all times since the Petition herein was filed, resided outside the continental limits of the United States, and affiant believes that plaintiff at all times since the filing of his Petition has resided at Hong Hong, B.C.C. [64]

b. Although the Petition herein was filed on December 23, 1952, the passport file relating to plaintiff (Defendant's Exhibit "A") was not received in the office of the United States Attorney for the Southern District of California until on or about March 19, 1954.

c. Upon receipt of said passport file, affiant did not know whether or not plaintiff would be issued a certificate of identity for the purpose of travelling to the United States to prosecute his action, as provided in Section 503 of the Nationality Act of 1940, 54 Stat. 1171, 8 U.S.C.A., §903; nor did affiant know or believe at that time that the court would proceed to trial in the absence of the plaintiff.

d. Up until the decision of this Court on March 1, 1955 in *Ong Hong Way v. Dulles*, Civil No. 13,379, affiant was of the opinion that the reports of blood tests made of plaintiff and his alleged parents contained in a duly authenticated passport file of the Department of State relating to plaintiff would be admissible in evidence under the provisions of 28 U.S.C.A. §§ 1732 and 1733.

e. After the aforementioned decision holding that such reports were not admissible in evidence, and after information was obtained indicating that plaintiff would not be permitted to come to the United States, the defendant moved the Court on May 6, 1955, for an Order requiring plaintiff to furnish a sample or samples of his blood to be transported to the United States for testing; and since that time the defendant with due diligence has been seeking to obtain a sample of plaintiff's blood as the file herein will disclose.

/s/ JAMES R. DOOLEY.

Subscribed and sworn to before me this 12th day of September, 1955.

[Seal] JOHN A. CHILDRESS,
Clerk, U. S. District Court,
Southern District of Calif.

By /s/ [Indistinguishable.]
Deputy. [65]

[Title of District Court and Cause.]

EXHIBIT B

AFFIDAVIT OF ALBERT L. BLIFELD

State of California,
County of Los Angeles—ss.

Albert L. Blifeld, being first duly sworn, deposes
and says:

I am a clinical laboratory technician, licensed by
the State of California, and I am employed in that
capacity by West Coast Medical Laboratories, Inc.,
610 South Broadway, Los Angeles, California. I
have had thirteen years experience in all phases of
clinical laboratory work. During my experience I
have examined thousands of blood specimens; and
have done these specific typing and grouping tests
for the Immigration and Naturalization Service for
a period of approximately three years.

On June 9, 1955, one Lun Hong Quan (Quan Lun
Hong) and one Gee Bo Yook (Gee Bo Yoke) ap-
peared at West Coast Medical Laboratories in
order to have their blood tested. On that date I ex-
tracted blood [66] specimens from Lun Hong Quan
and Gee Bo Yook and examined each of these speci-
mens for blood group and MN type, with results
as follows:

Lun Hong Quan

Blood Group:	"AB"
MN Factors:	"M" positive "N" positive
MN Type:	Type "MN"

Gee Bo Yook

Blood Group:	"B"
MN Factors:	"M" positive "N" positive
MN Type:	Type "MN"

At the time of their appearance on June 9, 1955, Lun Hong Quan and Gee Bo Yook identified themselves by affixing their signatures to statements to the effect that they were appearing pursuant to court order. These statements are being retained in the files of West Coast Medical Laboratories, Inc.

On August 15, 1955, at approximately 3:10 o'clock P.M. there was delivered to West Coast Medical Laboratories a sealed container. which by its markings indicated that it was sent from Dr. E. Vio, 315 H. K. Bank Bldg., Hong Kong. The container was addressed to West Coast Medical Laboratories, Inc. Inside this container were several vials, also sealed, two of which bore the name Quan Yoke Fong. The aforementioned container indicates that it was shipped via Pan American World Airways System, Air Waybill #026-14-562015. The container and vials mentioned above are being retained by West Coast Medical Laboratories, Inc. I have examined the blood specimens contained in the vials bearing the name Quan Yoke Fong for blood group and MN type, with the following results:

Blood Group:	"O"
MN Factors:	"M" positive "N" negative
MN Type:	Type "M"

Each of the aforementioned blood tests were made by me personally, and I took all possible precautions to insure the [67] accuracy of these tests. At the time of making each of these tests I made a record of the type of serum used, the condition of the blood, and the results of the test; and such records are being retained in the files of West Coast Medical Laboratories, Inc.

I am willing to testify in court concerning the matters set forth in this affidavit, and to bring with me all documents and other evidence relating thereto.

/s/ ALBERT L. BLIFELD.

Subscribed and sworn to before me this 23d day of August, 1955.

[Seal] /s/ JAMES R. DOOLEY,
Notary Public.

My Commission Expires Nov. 19, 1957. [68]

EXHIBIT C

[Title of District Court and Cause.]

AFFIDAVIT OF MICHAEL A. RUBINSTEIN

State of California,
County of Los Angeles—ss.

Michael A. Rubinstein, being first duly sworn, deposes and says:

That he is a Doctor of Medicine, licensed to prac-

tice medicine by the State of California and by the State of New York; that he is a specialist in internal medicine, including hematology, and is now practicing in the State of California, with offices at 414 North Camden Drive, Beverly Hills, California.

That from 1943 to 1953 affiant was hematologist at Montefior Hospital, New York City, New York; that from 1943 to 1952 he was a member of the hematologist staff of Mount Sinai Hospital, New York, New York; that from 1946 to 1953 affiant was a member of the faculty of Columbia University New York City, teaching hematology; and that from 1950 to 1953 he was Assistant Clinical Professor of Medicine at [69] New York Medical College, New York City, New York. That at present and since 1954 affiant has been a member of the staff of Cedars of Lebanon Hospital, Los Angeles, California. That affiant is a Diplomat of the American Board of Internal Medicine and is certified as a specialist in internal medicine by said Board.

That affiant has read an Affidavit of Albert L. Blifeld dated August 23, 1955, which shows that the results of certain blood tests conducted by said Albert L. Blifeld were as follows:

Lun Hong Quan

Blood Group: "AB"

MN Factors: "M" positive

"N" positive

MN Type: Type "MN"

Gee Bo Yook

Blood Group: "B"

MN Factors: "M" positive

"N" positive

MN Type: Type "MN"

Quan Yoke Fong

Blood Group: "O"

MN Factors: "M" positive

"N" negative

MN Type: Type "M"

That affiant has been informed by Assistant United States Attorney James R. Dooley that Quan Yoke Fong whose name appears above claims that Lun Hong Quan named above is his blood father and that Gee Bo Yook named above is his blood mother. That affiant was requested by said Assistant United States Attorney to evaluate the results of the blood tests set forth above for the purpose of determining whether it is medically possible for Quan Yoke Fong to be the child of Lung Hong Quan and Gee Bo Yook.

That affiant has studied the results of the blood tests as set forth in the Affidavit of Albert L. Blied and as recapitulated above. That while affiant is in no position to guarantee the accuracy of the results of the blood tests set forth above, since these tests were not conducted by him; it is the opinion of affiant, based upon his education, training, and experience in the field of hematology, that if Quan

Yoke Fong has blood of the group and type as set forth above, and if Lun Hong Quan and Gee Bo Yook have blood of the groups and types as set forth above, it is not possible for Lun [70] Hong Quan to be the blood father of Quan Yoke Fong.

Affiant has reached the foregoing conclusion for the following reasons:

A person of group "O" cannot be a child of a person of group "AB," because a child receives one gene from each of his parents. A child of a father of "AB" group will receive from him the "A" or "B" gene, and therefore will be either a group "A," "B," or "AB" (depending on the blood group of his mother), but never can he be of group "O," since this group contains neither "A" nor "B."

I am willing to testify in Court concerning the matters set forth in this Affidavit.

/s/ MICHAEL A. RUBINSTEIN.

Subscribed and sworn to before me this 8th day of September, 1955.

[Seal] /s/ J. K. CLARKE.

My commission expires Dec. 22, 1958. [71]

EXHIBIT D

Colony of Hong Kong,
City of Victoria,
Consulate General of the
United States of America—ss.

I, Leo J. Moser, Vice Consul of the United States of America in and for the consular district of Hong Kong, duly commissioned and qualified, do hereby certify that Harold John Armstrong, whose true signature and official seal are respectively subscribed and affixed to the annexed document, was, on the 12th day of August, 1955, the day of the date hereof, a Notary Public in and for the British Crown Colony of Hong Kong, duly commissioned and authorized to administer oaths and affirmations and to take declarations, to whose official acts full faith and credit are due.

For the contents of the annexed document no responsibility is assumed.

In witness whereof I have hereunto set my hand and the seal of the American Consulate General at Hong Kong this fifteenth day of August, 1955.

[Seal] /s/ LEO J. MOSER,

Vice Consul of the United
States of America.

Service No. 1979

No fee prescribed. [72]

Drs. Eric Vio, J. Carey-Hughes & J. M. Park

Affidavit

Colony of Hong Kong,
City of Victoria—ss.

I, Eric Vio, do hereby make oath and say that:

1. I am a qualified physician duly licensed to practice in the Colony of Hong Kong;

2. On the 12th day of August, 1955, I drew a sample of blood from Quan Yoke Fong at my office located at Hong Kong Bank Building, Victoria, in the said Colony;

3. Such blood sample was forthwith placed by me in a vial in the presence of the donor and of the undersigned Notary Public;

4. The said vial was sealed with sealing wax by the said Notary Public who affixed his Seal thereto and labeled as follows: "Quan Yoke Fong."

5. The said vial was then delivered to Pan American Airways for shipment by Air Express, under refrigeration, to The West Coast Medical Laboratory, 610 South Broadway, Los Angeles, California.

Sworn at Hong Kong Bank Building, Hong Kong
this 12th day of August 1955.

Before me,

[Seal] /s/ H. J. ARMSTRONG,
Notary Public, Hong Kong.

EXHIBIT E

Colony of Hong Kong,
City of Victoria,
Consulate General of the
United States of America—ss.

I, Leo J. Moser, Vice Consul of the United States of America in and for the consular district of Hong Kong, duly commissioned and qualified, do hereby certify that Harold John Armstrong, whose true signature and official seal are respectively subscribed and affixed to the annexed document, was, on the 12th day of August, 1955, the day of the date hereof, a Notary Public in and for the British Crown Colony of Hong Kong, duly commissioned and authorized to administer oaths and affirmations and to take declaration, to whose official acts full faith and credit are due.

For the contents of the annexed document no responsibility is assumed.

In witness whereof I have hereunto set my hand and the seal of the American Consulate General at Hong Kong this fifteenth day of August, 1955.

[Seal] /s/ LEO J. MOSER,

Vice Consul of the United
States of America.

Service No. 1978.

No fee prescribed. [74]

Drs. Eric Vio, J. Carey-Hughes & J. M. Park

Affirmation

Colony of Hong Kong,
City of Victoria—ss.

I, Quan Yoke Fong of 3, Cheong Ming Street, 1st floor, Hong Kong, do solemnly and sincerely affirm and say as follows:

1. On the 12th day of August, 1955, I attended at the office of Dr. Eric Vio, Hong Kong Bank Building Victoria in the Colony of Hong Kong.

2. When there Dr. Vio took a sample of blood from me and such blood sample was forthwith placed by him in a vial in my presence and in the presence of the undersigned notary public.

3. The said vial was then sealed with sealing wax by the said notary public who affixed his seal thereto and labelled as follows: "Quan Yoke Fong."

Affirmed at the Hong Kong Bank Building, Hong Kong, this 12th day of August, 1955, through the interpretation of Tang Hing Kim the said Tang Hing Kim having also been affirmed that he had distinctly and audibly interpreted the contents of this document to the Affirmant and that he would truly and faithfully interpret the Affirmation about to be administered to him. [75]

Before me,

[Seal] /s/ H. J. ARMSTRONG,

Notary Public, Hong Kong.

I, Tang Hing Kim, do hereby affirm and say that I well understand the English and Chinese languages and that I have truly and distinctly and audibly interpreted the contents of this document to the Affirmant Quan Yoke Fong and I will truly and faithfully interpret the Affirmation about to be administered to him (her).

Affirmed at 315 H. K. Bank Building, Hong Kong, this 12th day of August, 1955.

Before me,

[Seal] /s/ H. J. ARMSTRONG,
Notary Public, Hong Kong.

EXHIBIT F

Colony of Hong Kong,
City of Victoria,
Consulate General of the
United States of America—ss.

Before me, R. S. Anderson, Vice Consul of the United States of America at Hong Kong, British Crown Colony, duly commissioned and qualified, personally appeared Leo J. Moser, who, being duly sworn according to law, deposes and says:

1. My name is Leo J. Moser and I am a Vice Consul of the United States of America at Hong Kong, British Crown Colony;

2. On August 12, 1955, I did personally witness the drawing of two samples of blood from Quan Yoke Fong for the second time as directed by the Department of State in an instruction dated July 6, 1955;

3. Such samples were drawn by Dr. Eric Vio at his office located in the Hongkong and Shanghai Bank Building, Victoria, Hong Kong, British Crown Colony, and placed by said doctor in vials in the presence of the donor, Harold John Armstrong, a duly commissioned Notary Public in and for the British Crown Colony of Hong Kong, and myself;

4. The donor did then and there execute an affidavit before said Notary Public and in my presence stating the facts of the blood drawing, this affidavit having been previously translated to the donor by an interpreter, who then and there executed an affirmation as to the adequacy of his interpretation;

5. Dr. Eric Vio did then and there execute a similar affidavit before said Notary Public and in my presence stating the facts of the blood drawing;

6. The donor and I then witnessed the sealing of the vials by said Notary Public and their labeling with the name of the donor;

And further deponent saith not.

/s/ LEO. J. MOSER.

Subscribed and sworn to before me this sixteenth
day of August, 1955.

[Seal] /s/ R. S. ANDERSON,

Vice Consul of the United
States of America.

Service No. 2237

No fee prescribed.

Affidavit of service by mail attached.

[Endorsed]: Filed September 12, 1955. [77]

[Title of District Court and Cause.]

MINUTES OF THE COURT

OCT. 3, 1955

Hon. Harry C. Westover, District Judge.

Proceedings: .

For hearing motion of defendant, filed Sept. 12,
1955, for new trial.

Attorney Dooley argues in support of motion.

Court orders said motion of defendant for a new
trial denied.

JOHN A. CHILDRESS,
Clerk. [97]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that John Foster Dulles,
as Secretary of State, defendant above named,

hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final Judgment entered in this action on September 2, 1955.

Dated: This 28th day of October, 1955.

LAUGHLIN E. WATERS,
United States Attorney;

MAX F. DEUTZ,
Assistant U. S. Attorney,
Chief of Civil Division;

/s/ JAMES R. DOOLEY,
Assistant U. S. Attorney,
Attorneys for Defendant.

[Endorsed]: Filed October 28, 1955. [98]

[Title of District Court and Cause.]

STIPULATION REGARDING EXHIBITS

It is hereby stipulated, by and between the parties hereto, through their respective counsel, that the exhibits received in evidence in this cause may be considered in their original form by the United States Court of Appeals for the Ninth Circuit in connection with the pending appeal, and need not be printed.

Dated: This 12th day of January, 1956.

/s/ KATHLEEN PARKER,
Attorney for Plaintiff.

LAUGHLIN E. WATERS,
United States Attorney;

MAX F. DEUTZ,
Assistant U. S. Attorney,
Chief of Civil Division;

/s/ JAMES R. DOOLEY,
Assistant U. S. Attorney,
Attorneys for Defendant.

Receipt of copy acknowledged.

[Endorsed]: Filed January 24, 1956. [102]

In the United States District Court, Southern
District of California, Central Division
No. 14963-HW Civil

Honorable Harry C. Westover, Judge Presiding.

QUAN YOKE FONG,

Plaintiff,

vs.

JOHN FOSTER DULLES, Secretary of State,
Defendant.

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

Appearances:

For the Plaintiff:

KATHLEEN PARKER.

For the Defendant:

LAUGHLIN E. WATERS,
United States Attorney;

By JAMES R. DOOLEY,
Assistant United States Attorney.

May 16, 1955, 10:00 A.M.

The Clerk: Quon Yoke Fung vs. John Foster Dulles, Secretary of State, No. 14963-HW Civil, for hearing motion of defendant to dismiss, and motion of defendant to require parties to furnish samples of their blood and undergo blood tests.

Miss Parker: Ready for the plaintiff, your Honor.

Mr. Dooley: Ready, your Honor.

The Court: Mr. Dooley, your motion to dismiss is on what ground?

Mr. Dooley: The plaintiff was not denied a right or privilege at the time the complaint was filed.

The Court: What was the period that elapsed between the date of the application and the date of request and the filing of the suit?

Mr. Dooley: There was approximately a little over seven months.

The Court: Motion denied.

Mr. Dooley: The application was filed, I believe, your Honor, in May 1952, and this is a little closer than some of those that the court has denied. May 13, 1952.

The Court: You had seven months. I think

seven months is ample time for the Department to make some determination. Motion denied.

Miss Parker: Is the motion for the blood test granted? [3*]

The Court: The motion for the blood test is granted.

Mr. Dooley: I have the order, your Honor.

Miss Parker: If the court please, I don't know whether this is the proper time to bring up this matter, but the plaintiff's mother in this case—this case is set for trial July 11, and the plaintiff's mother is contemplating a trip to Hong Kong to visit the plaintiff. Could the court give me any idea when this will be tried? I don't know whether to let her go to Hong Kong or keep her here. The mother and father are both here. She wanted to go to Hong Kong in July. If the case will be tried during July and August, I will keep her here.

The Court: You know, if she is here, I certainly wouldn't have her go back to Hong Kong. She might never get back. If she is here, and she wants this party to come in—have you got the mother and father both here?

Miss Parker: I have the mother and father both here, your Honor.

The Clerk: It is on the setting calendar for July 11.

The Court: Are you getting any of these blood samples back?

Mr. Dooley: No, your Honor. You remember the

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

one just now that was dismissed, the plaintiff didn't show up for the blood sample and the motion was based on that ground. That was 13379. [4]

Miss Parker: What does your order show on this? What date have you asked the plaintiff to appear?

Mr. Dooley: I believe it was June 9th.

The Court: Can we do this? If the mother and father are here, can't we go ahead and take their testimony and then hold in abeyance the report on the blood sample? If the father and mother are here and they will testify, the government has pretty near an insurmountable barrier to get over. If the blood is compatible in any way, the judgment will be a matter of course.

Mr. Dooley: Yes, your Honor. The defendant has no objection to that procedure. We are contending that the blood is not compatible.

The Court: I don't know whether it is or not. You know, there have been mistakes made over there.

Mr. Dooley: Yes, your Honor.

The Court: It is just possible that I might be able to work this case in before July. I could probably try this case next week and then if the mama wants to go to Hong Kong, all right, but if she is here, I want her testimony.

Miss Parker: Well, if she goes to Hong Kong, she will go with an American passport.

The Court: But if she is here, I want her testimony. I don't want her to get over to Hong Kong first. Can you try it some time next week? [5]

Miss Parker: Your Honor, I have a denaturali-

ation case scheduled next week that is likely to take the entire week.

The Court: Suppose I set the matter for trial in the week of the 30th. The 30th is a holiday, so you will have to come in on the 31st to determine when we can have a trial.

Mr. Dooley: Very well, your Honor.

The Court: If I have got the mama and papa here, I would like to have their testimony.

Mr. Dooley: Your Honor, in connection with the motion made to dismiss the action, I would like to submit the passport file in evidence on that motion.

The Court: It may be submitted.

Mr. Dooley: And I should also like to present the statement concerning the processing of passport application in Hong Kong.

The Court: Over objection, it may be admitted.

Mr. Dooley: Your Honor, I would like to withdraw that and substitute a photostatic copy.

The Court: Such may be the order.

Mr. Dooley: I don't have the photostatic copy at present, your Honor.

Miss Parker: The passport file, your Honor, is admitted solely for the purpose of establishing the dates, is that correct?

The Court: Only for the purpose of establishing the dates [6] when the application was made and when the suit was filed, et cetera. Here is your order relative to the blood tests, Mr. Dooley.

The Clerk: Those will be Defendant's Exhibits A and B in case 14963.

(The exhibits referred to were marked as Defendant's Exhibits A and B and received in evidence.) [7]

Tuesday, May 31, 1955—10:00 A.M.

The Clerk: Quon Yoke Fong vs. John Foster Dulles, No. 14963-HW Civil, for trial.

Miss Parker: Ready for the plaintiff.

Mr. Dooley: The defendant is ready, your Honor.

The Court: When will you be ready to go to trial?

Miss Parker: Any time.

Mr. Dooley: Any time, your Honor. This is a case where decision will be postponed until the blood test is determined.

The Court: Tomorrow?

Miss Parker: Satisfactory.

Mr. Dooley: Satisfactory.

The Court: Wednesday morning at 10:00 [9] o'clock.

Tuesday, June 1, 1955, 10:00 A.M.

The Clerk: No. 14963-HW Civil, Quon Yoke Fong vs. John Foster Dulles, Secretary of State, trial.

Miss Parker: Ready for the plaintiff, your Honor.

Mr. Dooley: Ready for the defendant, your Honor.

The Court: Will we need an interpreter?

Miss Parker: Yes, for Mrs. Quon.

The Court: Swear the interpreter.

(Lily L. Chan was thereupon sworn to interpret from English into Chinese and from Chinese into English.)

Mr. Dooley: May I have a short examination of the interpreter, your Honor?

The Court: Yes.

LILY CHAN

Called as a witness herein by the defendant, having been first duly sworn, was examined and testified as follows:

Voir Dire Examination

By Mr. Dooley:

Q. Mrs. Chan, do you know the plaintiff in this case? A. I do not, no.

Q. Do you know the witnesses in this case? A. No.

Q. Have you discussed this case with the witnesses who [11] are to appear in this case? A. No.

Q. Have you discussed this case previously with anyone?

A. No. I have never seen any of them until today.

Mr. Dooley: No further questions.

(Witness excused.)

The Court: I will make the regular order that all the witnesses, except the witness on the stand, will remain out of the courtroom until called.

Miss Parker: Mr. Quon, will you take the stand?

LUN HONG QUAN

called as a witness herein by and on behalf of the plaintiff, having been first duly sworn, was examined and testified, without the use of the interpreter, as follows:

The Clerk: Will you take the stand, sir, and state your name?

The Witness: My name is Lun Hong Quan.

Miss Parker: If the Court please, the government will stipulate that Quan Lun Hong made three trips to China. The first one, he departed May 7, 1921, returned May 7, 1922. Departed March 1, 1929, returned July 9, 1930. Departed March 30, 1937, and returned July 22, 1938.

That he was admitted to the United States as the son [12] of a native on July 6, 1916.

The Court: Is that stipulated?

Mr. Dooley: So stipulated, with one exception. There is probably an error on this return date for the second trip. My notations——

Miss Parker: Returned May 4, 1922, your Honor.

Mr. Dooley: So stipulated.

Miss Parker: Do the immigration records show the marriage date?

Mr. Dooley: The immigration records in that respect would only show what the witnesses stated. With respect to the marriage, the immigration records would only show what one of the witnesses stated, and I don't know whether what they——

The Court: Well, we come to the same place in

(Testimony of Lun Hong Quan.)

his case as in the other cases. Where one child is admitted as a native or as a national, it seems to me that the government doesn't stand in a very good position in denying the marriage, because if the government did not admit the marriage, they wouldn't have admitted the first child, because that is necessary in all these cases. According to the information I have, there is a brother of the plaintiff admitted to the United States in 1951. Isn't that true?

Mr. Dooley: By the immigration authorities.

The Court: Yes.

Mr. Dooley: The decision of the immigration authorities [13] is more in the nature of an opinion that the witnesses were telling the truth when they stated a particular matter. It isn't something like, for instance, the departures and the returns. That is something that the Service knows as a fact, because they kept records when the individual left. But as far as the existence of the marriage, it is only an opinion.

The Court: All right. You can ask the witness. It's a very simple matter to have the witness testify that they were married.

Miss Parker: Will you also stipulate, Mr. Dooley, Gee Bo Yoke was admitted to the United States as the wife of a citizen on April 18, 1949?

Mr. Dooley: So stipulated.

Miss Parker: And Quan Hang Fong was admitted to the United States as a citizen on August 3, 1951?

(Testimony of Lun Hong Quan.)

Mr. Dooley: So stipulated.

Direct Examination

By Miss Parker:

Q. Mr. Quan, where do you reside? Where do you live? A. 1600 North Boylston.

Q. How long have you been a resident of Los Angeles County? A. Since 1925.

Q. Since 1925? A. Yes. [14]

Q. Where were you born? A. China.

Q. Of what country are you a citizen?

A. America.

Q. Are you married? A. Yes.

Q. What is the name of your wife?

A. Gee Bo Yoke Quan.

Q. When and where were you married?

A. In Ping On Village, Kowkwong.

Q. What is the date of your marriage?

A. 1921, in July.

Q. Is that your only marriage? A. Yes.

Q. What are the names of your children?

A. Quan Yoke Fong and Quan Hang Fong.

Q. Where and when were your children born?

A. In Kowkwong, China.

Q. What is the date of their birth?

A. Quan Yoke Fong, born in 1922, February 7.

The Court: Which one is that?

The Witness: February 13.

Mr. Dooley: Your Honor, we are not able to hear the witness. [15]

(Testimony of Lun Hong Quan.)

The Court: Will you speak up? The attorneys have to hear, so please speak up.

The Witness: Born in 1922, February 13.

The Court: Who was that?

The Witness: Quan Yoke Fong.

The Court: 1922?

The Witness: Yes.

Q. (By Miss Parker): That was the same year you were married, Mr. Quan?

A. I didn't hear.

Q. Is that the same year you were married?

A. No. 1921, I marry.

Q. Were you in China——

The Court: Well, let's get the second brother. He has only testified as to one.

The Witness: The youngest son, Quan Hang Fong.

Q. (By Miss Parker): He was born when?

A. 1938.

Q. What date? A. May 24.

Q. Were you in China when either of your sons was born? A. Yes.

Q. Were you in China when Quan Yoke Fong was born? A. Yes.

Q. Were you in China when Quan Hang Fong was born? [16] A. Yes.

Q. When you returned to China in 1929, did you go directly to your village? In 1929, when you returned to China, did you go directly to your village?

A. Yes.

Q. And you stayed in China on that trip for a

(Testimony of Lun Hong Quan.)

little over a year. Were you in the village during that entire time? A. Yes.

Q. Did you live with your wife in the village home at that time? A. Yes.

Mr. Dooley: Object to the question, your Honor, as being leading and suggestive.

The Court: Overruled.

Q. (By Miss Parker): When you returned to China on your third trip in 1937, did you go to your village? A. Yes.

Q. Did you stay in the village during the entire time you were in China? A. Yes.

Q. Did you go to your home and did you live with your wife and your children at that time?

Mr. Dooley: Object, your Honor, to the question as calling for a yes or no answer.

The Court: Overruled. Read the question. [17]

(Question read.)

The Witness: Yes.

Q. (By Miss Parker): What is the present residence of your wife? Where does your wife live at the present time? A. Now, you mean?

Q. Yes. A. Live with me.

Q. She lives with you in Los Angeles?

A. Yes. On Boylston.

Q. Where is your son, Quon Yoke Fong, at the present time? A. In Hong Kong.

Q. Where is your son, Quan Hang Fong?

A. He live with me now.

Q. He lives with you at the present time?

(Testimony of Lun Hong Quan.)

A. Yes.

Q. Mr. Quan, did you sign an affidavit for the purpose of bringing your son, Quan Yoke Fong, to the United States?

A. I did not hear that.

Q. Did you execute an affidavit for the purpose of bringing your son, Quan Yoke Fong, to the United States?

A. Can I ask—I don't understand that word.

The Court: Affidavit? Better explain what an affidavit is.

Q. (By Miss Parker): Did you sign any document in which [18] you listed your children's names and your trips and your citizenship, on which was contained a photograph of yourself and your son, Quan Yoke Fong, for the purpose of having Quan Yoke Fong come to the United States in approximately——

The Court: Miss Parker, if you have the affidavit, I think the affidavit is the best evidence, or, if the government has it, it is the best evidence.

Miss Parker: I have a copy of it, your Honor.

The Court: Has the government got the original?

Miss Parker: The original is in the passport file.

Mr. Dooley: In the passport file which was introduced in evidence in support of the motion to dismiss.

The Court: Let's see the passport file.

The Clerk: I suggest Mr. Dooley withdraw the exhibits and they be reoffered in the trial to keep it straight.

(Testimony of Lun Hong Quan.)

The Court: They are not in evidence?

The Clerk: They are in evidence as far as the hearing on the motion.

The Court: Let me see the file. Miss Parker, here is the original. Rather than ask the witness what he did, I think the document is the best evidence.

Miss Parker: I will be glad to offer the document in evidence if the Court will accept the document other than the whole file.

The Court: It may be received in evidence. [19]

Mr. Dooley: Objection, your Honor.

The Court: Well, I waited for an objection and I didn't hear any.

Mr. Dooley: I did not know that it was in the form of an offer.

The Court: She said, "I would like to offer it."

Mr. Dooley: I object on the ground it is hearsay, your Honor, and if it is being offered for the truth of its contents——

The Court: I don't know if it is being offered for the truth of the contents. It is being offered to show the application was made.

Mr. Dooley: Yes, your Honor.

The Court: It is up to the plaintiff to show an application was made and it was denied. Are you willing to stipulate an application was made and it was later denied?

Mr. Dooley: I object on the additional ground——

The Court: Wait a minute. Before you make

Testimony of Lun Hong Quan.)

Objection, are you willing to stipulate an application was made and then denied? It is incumbent upon the plaintiff to prove he made an application.

Mr. Dooley: Yes, your Honor.

The Court: And that application was denied, either denied by inaction or denied by positive action on the part of the authorities? [20]

Mr. Dooley: Yes, your Honor. I believe the application itself would be the best evidence.

The Court: You are objecting to the application?

Mr. Dooley: No, I am not, your Honor. I was objecting solely to the introduction of the affidavit. The defendant introduced the entire file to show what took place before the American Consulate and the defendant is still willing to introduce the entire file solely for the purpose of showing what took place, but to pick out a piecemeal portion, merely an affidavit of that file, to show what took place, I believe will give——

The Court: Isn't the rule that the plaintiff can introduce any document in the file, and later, if you want to, if she introduces any document, you can offer the entire file? You can't object to the introduction of a part of the file, but you do have a right to say a part is introduced and you want all introduced.

Mr. Dooley: Yes, your Honor.

The Court: Do you have a right to say, "I object to the introduction of this particular document"?

Mr. Dooley: I believe this particular document, your Honor, is irrelevant and immaterial as far as this case goes, and it is hearsay and self-serving.

(Testimony of Lun Hong Quan.)

The Court: Ordinarily you have got to file an affidavit, isn't that right? [21]

Mr. Dooley: That is the procedure. I don't know of any regulation, though.

The Court: Isn't this the same procedure that has been followed right along?

Mr. Dooley: Yes, your Honor, but the thing that she is complaining about is denial of a passport application.

The Court: Are you willing to stipulate that the plaintiff made an application for a passport?

Mr. Dooley: Yes, I can stipulate that.

The Court: All right. Are you willing to stipulate that the application was denied?

Mr. Dooley: I believe the passport—the reason I say that passport file is the best evidence of what took place——

The Court: I am not asking you that. I am asking you if you are willing to stipulate. If you are willing to stipulate, then we don't have to have the evidence.

Mr. Dooley: I would prefer it go in, your Honor.

The Court: All right. It may be received and marked as Plaintiff's Exhibit 1. That is, it is marked, provided the witness will lay a foundation that that is his signature.

Q. (By Miss Parker): Mr. Quan, I show you an affidavit and ask you if that is your signature on that affidavit? A. Yes.

Q. Is that your photograph, photograph No. 1?

A. Yes. [22]

Testimony of Lun Hong Quan.)

Q. Of whom is photograph No. 2?

A. My boy.

Q. Which boy? A. Quan Yoke Fong.

The Court: It may be received in evidence.

The Clerk: Exhibit 1.

(The document referred to was received in evidence and marked as Plaintiff's Exhibit No. 1.)

Q. (By Miss Parker): Mr. Quan, to your knowledge, did your son, Quan Yoke Fong, file this affidavit with the American Consul?

A. Through the American Consul, you mean?

Q. Did he present this affidavit, to your knowledge?

Mr. Dooley: Object to the question.

The Court: The Court can assume it was presented because it is in the government file. I don't know how it would get there otherwise. You are willing to stipulate, aren't you?

Mr. Dooley: It was presented by someone. Object to the question, however, on the ground it calls for hearsay.

The Court: Sustained. Doesn't the affidavit show a stamp when it was received?

Miss Parker: Yes, it does, your Honor. I will also offer in evidence the application for passport executed by Quan Yoke Fong on May 13, 1952.

The Court: There is no objection, is there? [23]

Mr. Dooley: There is no objection if it is being offered to show what took place before the American Consulate.

(Testimony of Lun Hong Quan.)

The Court: It may be received as Plaintiff's Exhibit 2.

The Clerk: Plaintiff's Exhibit 2.

(The document referred to was received in evidence and marked as Plaintiff's Exhibit No. 2.)

Miss Parker: Your Honor, may I have these photographs marked for identification?

The Court: They may be marked for identification.

The Clerk: Plaintiff's Exhibits 3, 4 and 5 for identification.

Miss Parker: And also this one.

The Court: Exhibit 6 for identification.

The Clerk: 6 for identification.

(The photographs referred to were marked as Plaintiff's Exhibits 3, 4, 5 and 6 for identification.)

Q. (By Miss Parker): Mr. Quan, I will show you Plaintiff's Exhibit 3 for identification and ask you if you can identify the photograph of the persons shown thereon, the person on the left first.

A. My wife.

Q. What is her name? A. Gee Bo Yoke.

Q. The child in the middle?

A. Quan Yoke Fong. [24]

Q. And Quan Yoke Fong is your son?

A. Yes, older son.

Q. Your oldest son? A. Yes.

(Testimony of Lun Hong Quan.)

Q. And the person on the right?

A. That is myself.

Q. Do you recall when that picture was taken?

A. 1937.

Q. About how old was your son at that time?

A. About eight years old.

Q. Do you recall the Chinese date of the birth of your son?

A. The Chinese date?

Q. The Chinese date.

A. Well, I can't recall, but I know it is American 1930, February 13.

Q. February 13, 1930?

A. Yes.

Q. I show you plaintiff's Exhibit 4 for identification and ask you if you will identify the persons in the photograph.

A. Yes.

Q. The lady seated is——

A. My wife, Gee Bo Yoke.

Q. And this photograph? [25]

A. Myself.

Q. And do you recall when that photograph was taken?

A. When she first came over in 1949.

Q. When she first came to the United States in 1949?

A. Yes.

Q. I show you Plaintiff's Exhibit 5 for identification and ask you if you can identify the persons shown in the photograph. The boy on the left?

A. My youngest boy.

Q. Your youngest boy, Quan Yoke Fong?

A. Quan Hang Fong.

Q. Pardon me. The party in the middle?

A. My wife, Gee Bo Yoke.

Q. The party on your right?

(Testimony of Lun Hong Quan.)

A. The oldest boy, Quan Yoke Fong.

Q. Do you know when this photograph was taken?

A. My wife told me about after the war it took at Hong Kong.

Mr. Dooley: I object, your Honor.

The Court: The wife can testify.

Miss Parker: Very well, your Honor.

Q. (By Miss Parker): I show you Plaintiff's Exhibit No. 6 for identification and ask you if you can identify the two persons there.

A. Yes. Left, my youngest boy, Quan Hang Fong. Right, the oldest boy, Quan Yoke Fong. [26]

Q. Do you have knowledge as to when this photograph was taken?

A. I understand it was took in April in Hong Kong when my wife came over that time.

Mr. Dooley: I object, your Honor, and move to strike the answer.

The Court: It may go out.

Q. (By Miss Parker): Where did you get this picture, Mr. Quan? A. My wife brought it over

Q. Your wife brought it over? A. Yes.

Q. In 1951?

A. No. 1949, she came over. I think maybe my boy did. I am not sure.

Miss Parker: May I offer the photographs in evidence, your Honor?

The Court: They may be received in evidence

The Clerk: Plaintiff's Exhibits 3, 4, 5 and 6 in evidence.

Testimony of Lun Hong Quan.)

(The exhibits referred to were received in evidence and marked as Plaintiff's Exhibits 3, 4, 5 and 6.)

Q. (By Miss Parker): Mr. Quan, do you recall in December, 1952, addressing a cable to the American Consul at Hong Kong [27] regarding the application of your son, Quan Yoke Fong?

A. Yes, I did send a wire.

The Court: Will you speak up a little louder, please?

Miss Parker: May I have these marked?

The Court: They may be marked Exhibits 7 and 8.

The Clerk: 7 and 8 for identification.

(The exhibits referred to were marked Plaintiff's Exhibits 7 and 8 for identification.)

Q. (By Miss Parker): Mr. Quan, I show you a copy of a cable addressed to the American Consul General, Hong Kong, dated December 11, 1952, and ask if that is the cable that you sent to the American Consul on that day. A. Yes, I did.

Q. Did you during the same month address a wire to the United States Department of State in Washington, D. C., regarding your son's application for a passport? A. Yes, I did, too.

Q. I show you Plaintiff's Exhibit No. 8, addressed to the United States Department of State, Passport Division, Washington, D. C., dated De-

(Testimony of Lun Hong Quan.)

ember 17, 1952, and ask you if this is the telegram you sent to the Department of State. A. Yes

Q. In your wire of December 17, 1952, to the Department of State in Washington, you stated

“If I have not been advised of favorable [28] decision prior to December 23 will assume application is denied.”

Mr. Dooley: Object, your Honor, to reading the contents of the document before admission into evidence.

The Court: Sustained.

Miss Parker: May I offer these telegrams for admission in evidence?

Mr. Dooley: Object, your Honor, on the ground that they do not constitute the best evidence.

The Court: What is the best evidence?

Mr. Dooley: Well, in the case of one of the telegrams, at least, the best evidence is the original telegram.

The Court: Who has the original telegram?

Mr. Dooley: It is contained in the file.

The Court: Do you say that this is not a correct copy of the original? Which file is it contained in?

Mr. Dooley: The State Department file.

The Court: If we have the original, I think the objection is good. You can introduce the original.

Miss Parker: May I offer the original?

The Court: The original may be received in evidence.

The Clerk: Plaintiff's Exhibit 7.

Testimony of Lun Hong Quan.)

(The document referred to was received in evidence and marked as Plaintiff's Exhibit No. 7.)

Miss Parker: Does the Department file show the original [29] of the telegram sent to the Department of State in Washington?

Mr. Dooley: The Department has no knowledge of the telegram having been sent. The State Department file is there.

The Court: Mr. Dooley, isn't there a presumption that a letter that is mailed is delivered? Doesn't that presumption go along with a telegram?

Mr. Dooley: Your Honor, I am wondering where this copy came from. I would like to ask the witness a few questions concerning it generally.

The Court: Take the witness on voir dire and ask about it.

Voir Dire Examination

By Mr. Dooley:

Q. Mr. Quan, did you prepare this copy?

A. You mean the letter?

Q. Yes. Did you prepare this document which is before you in the form it is in?

A. Well, I talk to my lawyer, and so I sent it out, you know, sent the telegram to the State.

The Court: Who was your lawyer at that time?

Miss Parker?

The Witness: Yes.

(Testimony of Lun Hong Quan.)

The Court: Miss Parker, did you send the telegram?

Miss Parker: I did not send the telegram, your Honor. I [30] prepared the telegram.

The Witness: I talked to her about it.

The Court: Is that a copy of the telegram that you prepared?

Miss Parker: No, your Honor, it is not. I dictated the telegram over the telephone.

The Court: Mr. Dooley, is there a contention of the government that the application was not denied?

Mr. Dooley: No, your Honor.

The Court: The application was filed on May 13, 1952. What is the date of this telegram?

Miss Parker: December 17, 1952.

The Court: Now, the government had from May to December to pass upon this application.

Mr. Dooley: Yes, your Honor.

The Court: Did the government ever pass upon it?

Mr. Dooley: The government, I believe, passed upon the application, but not prior to the time the complaint was filed.

The Court: I have already ruled on that, haven't I? That a failure to act within this period of time is a denial.

Mr. Dooley: Yes, your Honor.

The Court: Are you trying to establish by putting in that telegram that there was a denial?

Miss Parker: I am trying to establish, your Honor, that there was in effect a denial prior to the

(Testimony of Lun Hong Quan.)

...time the complaint [31] was filed, because there was no answer to this telegram within the time specified in the telegram. The formal denial, I believe the passport file shows on January 7. Is that correct, Mr. Dooley?

Mr. Dooley: I will check that in just a moment.

Miss Parker: And Mr. Quan wired the State Department on December 17 and asked them about it.

The Court: Let him testify that he wired the State Department. We haven't got that testimony yet. The testimony is you dictated the telegram over the phone.

Direct Examination
(Resumed)

By Miss Parker:

Q. Do you know of your own knowledge that this telegram was sent to the State Department on December 17?

Mr. Dooley: Object on the ground the witness has already indicated he doesn't.

The Court: Overruled.

The Witness: You mean I did send this telegram?

Q. (By Miss Parker): You sent this telegram to the State Department on December 17, 1952?

A. Yes.

Miss Parker: May I offer this in evidence?

Mr. Dooley: Object, your Honor. May I ask one more question? [32]

(Testimony of Lun Hong Quan.)

The Court: Yes.

Mr. Dooley: In what manner did you send this telegram, Mr. Quan? Did you go down to the telegraph office?

The Witness: No. I didn't make up this. A friend of mine made it up for me. I tell him what to do and he make it up.

The Court: Did you actually go down to the telegraph office and send the telegram?

The Witness: A friend of mine went down there.

The Court: You gave it to a friend to send?

The Witness: Yes.

The Court: Objection sustained.

Q. (By Miss Parker): Mr. Quan, was your oldest son, the plaintiff, Quan Yoke Fong, born during your first trip to China or was he born during your second trip to China? A. Second trip.

The Court: Your oldest son?

The Witness: Oldest son, yes.

The Court: And the date of his birth again?

The Witness: 1930, February 13th.

Miss Parker: I have no further questions of this witness.

The Court: I understand that no children were born during your first trip?

The Witness: Right.

The Court: The oldest son was born during your second [33] trip?

The Witness: Yes, sir.

The Court: And your youngest son was born during what trip?

(Testimony of Lun Hong Quan.)

The Witness: Third trip.

The Court: Third trip?

The Witness: Yes.

The Court: Do you want to postpone your cross-examination?

Mr. Dooley: Yes, your Honor.

The Court: You may step down.

(Witness withdrawn.)

Miss Parker: Gee Bo Yoke.

GEE BO YOKE

called as a witness herein by and on behalf of the plaintiff, having been first duly sworn, was examined and testified, through the interpreter, as follows:

The Clerk: Will you take the stand and state your name?

The Witness: Quan Gee Bo Yoke.

Direct Examination

By Miss Parker:

Q. Mrs. Quan, where do you reside?

A. 1600 North Boylston. [34]

Q. Where were you born?

A. I was born KS 30, 2nd month, 5th day.

Q. Where were you born? A. Kowkwong.

Q. That is in China, is it? A. Yes, China.

Q. When were you admitted to the United States?

(Testimony of Gee Bo Yoke.)

A. CR 38, Chinese date, 3rd month, 15th day

Miss Parker: What is the date?

The Interpreter: April 12, 1949.

Q. (By Miss Parker): How were you admitted to the United States at that time?

A. Citizen paper.

Q. Were you admitted as the wife of a citizen of the United States?

A. That's right, the wife of a citizen.

Q. Are you married? A. Yes.

Q. To whom are you married?

A. Quan Lun Hong.

Q. When were you married?

A. Kowkwong, Canton, China, or Kwangtung

Q. The date? A. Chinese date CR 10-6-25

The Interpreter: July 29, 1921. [35]

Q. (By Miss Parker): Do you have any children? A. Two sons.

Q. What are the names of your sons?

A. The big one, the older one, is called Quan Yoke Fong. The second one is Quan Hang Fong

Q. When was your older son born?

A. Chinese date CR 19-1-5.

The Interpreter: February 13, 1930.

Q. (By Miss Parker): Where was your son born? A. Kowkwong Village.

Q. What is the birth date of your younger son?

A. CR 27-4-25.

The Interpreter: May 24, 1938.

Q. (By Miss Parker): Was your husband Quan Lun Hong, in China at the time your first

(Testimony of Gee Bo Yoke.)

son was born? A. Yes.

Q. Was he at home with you in the village?

A. Yes.

Q. Was your husband, Quan Lun Hong, in China when your second son was born?

A. Also at home.

The Court: When your husband was home when your second child was born, how old was your first child at that time?

The Witness: About 9.

The Court: In the village, whose house did you live in? [36]

The Witness: I rented the house.

The Court: Did you rent the same house when your No. 1 son was born?

The Witness: Same.

The Court: Did you live in that house with your No. 1 son from the time the No. 1 son was born until your husband came home in 1937?

The Witness: The same house.

The Court: Did your son live with you?

The Witness: Yes.

The Court: Who else lived in the house with you?

The Witness: Just myself and the son.

The Court: When your husband returned to the United States in 1938, did you still live in that same house?

The Witness: Yes.

The Court: Did you still live in the same house from 1938 until you came to the United States in 1949?

(Testimony of Gee Bo Yoke.)

The Witness: Yes.

The Court: And did your No. 1 son live in the house with you?

The Witness: Yes.

The Court: When you came to the United States in 1949, when you left the family home in the village how old was your No. 1 son?

The Witness: CR 27, which is 1938, after the Japanese [37] invasion of China, I had already moved from the village to Hong Kong.

The Court: Did your No. 1 son go with you to Hong Kong?

The Witness: Yes, together we moved.

The Court: How old was your No. 1 son when you went to Hong Kong in 1938?

The Witness: My son was born 27 CR. He would be about 9 years old then.

The Court: Was your second son born in the village?

The Witness: My second son is the one that was born in CR 27.

The Court: Was he born in the village?

The Witness: After birth, yes, we moved several months after he was born.

The Court: Then after your No. 2 son was born several months later you went to Hong Kong?

The Witness: He was born the 4th month of the Chinese calendar, and I moved at the end of the same year to Hong Kong.

The Court: At the time you moved to Hong Kong, your No. 1 son was how old?

Testimony of Gee Bo Yoke.)

The Witness: We call him around 9 years old.

The Court: When you got to Hong Kong, where did you live?

The Witness: Yick Yum Street, near Happy Valley.

The Court: In a hotel room or house?

The Witness: A flat. [38]

The Court: Did you live in that same flat until you came to the United States?

The Witness: Yes.

The Court: Did your No. 1 and No. 2 sons live with you?

The Witness: Same place.

The Court: When you came to the United States, did you bring your No. 2 son with you?

The Witness: No.

The Court: You left your No. 1 and No. 2 sons in Hong Kong?

The Witness: That's right.

The Court: When you came to the United States, how old was your No. 1 son?

The Witness: In the vicinity of 19, I would say, and now I would call him 26, the oldest son.

The Court: When you came to the United States, you left your oldest son in Hong Kong and he was how old at that time?

The Witness: Chinese date, I came over in CR 38.

The Court: When you came to the United States in CR 38, how old was your No. 1 son then?

(Testimony of Gee Bo Yoke.)

The Witness: I have been here seven years already. I call him around 26 Chinese date.

The Court: Now?

The Witness: Now.

The Court: How old was he when you left Hong Kong? [39]

The Interpreter: She can't figure it.

The Witness: I have been here seven years and I call him 26 years old now, and when I came, he was around 19 Chinese.

The Court: How old was your No. 2 son at that time?

The Witness: About 12.

The Court: Then you lived with your No. 1 son from the time he was born in the village until you came to the United States, a period of about 19 years?

The Witness: That's right.

Q. (By Miss Parker): Mrs. Quan, I show you Plaintiff's Exhibit 2, application for passport, and ask you if you can identify the photographs on the back of the passport.

A. This is my oldest son, No. 1 son.

Q. I show you Plaintiff's Exhibit 3 and ask you if you can identify the person on the left, the lady on the left.

A. This is I.

Q. And the little boy sitting in the middle?

A. This is my son.

Q. Which son, Mrs. Quan? A. No. 1 son.

Q. And the person on your left?

A. This is my husband.

Testimony of Gee Bo Yoke.)

Q. Do you recall when this photograph was taken, Mrs. Quan?

A. I think it was CR 27. [40]

Miss Parker: What date is that?

The Witness: The time when he went back to China.

The Interpreter: CR 27 would be about '38 or early '39.

The Court: Is that Exhibit 3?

Miss Parker: Yes, your Honor.

The Witness: Excuse me. It was the year when he went home, CR 26, about that time.

Mr. Dooley: Would you translate that?

The Interpreter: CR 26 would be about 1937 or early 1938, first month in 1938.

The Court: At the time that picture was taken, how old was your No. 1 son?

The Witness: About 8, what you call around 8. Either 8 or 9 years old.

The Court: Was that picture taken in the village?

The Witness: In the village.

The Court: That picture was taken before you went to Hong Kong?

The Witness: Not yet, yes.

The Court: Not yet had gone to Hong Kong?

The Witness: Not yet had gone to Hong Kong.

Q. (By Miss Parker): I show you Plaintiff's Exhibit 4 and ask you if you can identify the persons in that photograph.

(Testimony of Gee Bo Yoke.)

A. This one sitting down is myself. This is my husband. [41]

Q. Do you recall when this picture was taken?

A. The year that I came over here, CR 33, about 1949.

Q. I show you Plaintiff's Exhibit 5 and ask you if you can identify the persons in that photograph. Who is the smaller boy on the left?

A. My little boy.

Q. The person in the middle?

A. This is I.

Q. The one on the right?

A. My older boy.

Q. Do you recall when that picture was taken?

A. About CR 36, before I came to the United States. It was taken in Hong Kong.

Q. I show you Plaintiff's Exhibit 6 and ask you if you can identify that.

A. Picture of my two boys.

Q. The one on the left is which boy?

A. The left side is my younger boy. The right side is the older boy.

Q. Do you know when this photograph was taken?

A. At the time when my little boy came to the United States. It was taken at the airport in Hong Kong.

The Court: When did your little boy come to the United States?

The Witness: CR 40, 1951 American date. I

Testimony of Gee Bo Yoke.)

think he [42] arrived here around the end of July of 1951.

Miss Parker: I have no further questions of this witness.

The Court: Well, before we proceed with any cross-examination, we will take the morning recess. We will recess until 20 minutes after 11:00.

(Recess.)

The Court: You may proceed now.

Miss Parker: Will you mark this exhibit?

The Court: It may be marked the next exhibit.

The Clerk: Plaintiff's Exhibit 9 for identification.

(The exhibit referred to was marked as Plaintiff's Exhibit No. 9 for identification.)

LUN HONG QUAN

Recalled as a witness by and on behalf of the plaintiff, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

(Continued)

By Miss Parker:

Q. Mr. Quan, I show you United States individual income tax returns for the years 1941 to 1954, inclusive, and ask you if these are your file copies of your federal income tax returns filed for those years? A. Yes. [43]

Miss Parker: If the Court please, I would like

(Testimony of Lun Hong Quan.)

to introduce this Exhibit 9 as one exhibit, the income tax returns for the years 1941 through 1954.

The Court: Does it show he claimed No. 1 son as a dependent?

Miss Parker: Yes, it does, your Honor.

Mr. Dooley: Objection, Your Honor, on the ground that the copies are not the best evidence. The originals may be obtained at the request of the taxpayer duly authenticated by the Internal Revenue.

Miss Parker: If I may answer Mr. Dooley, if he has ever tried to get any income tax returns back of four years, he will find the government doesn't keep them.

The Court: Are these true and correct copies of the returns filed?

The Witness: Yes.

The Court: Objection overruled.

Mr. Dooley: I have an objection on another ground. They are self-serving documents.

The Court: Overruled.

The Clerk: Plaintiff's Exhibit 9.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit No. 9.)

Miss Parker: May I also ask permission of the Court to withdraw these at the conclusion of the case? [44]

The Court: They may be withdrawn.

Mr. Dooley: That is at the conclusion of the appeal?

The Court: Yes, at the conclusion of the case.

Testimony of Lun Hong Quan.)

The case is not over with until an appeal has been determined, or a writ of certiorari has been denied if it is asked for in the Supreme Court.

Q. (By Miss Parker): Mr. Quan, I show you the original of a cable addressed by you to the American Consul at Hong Kong, December 12, 1952, and ask you if you received any reply to this cable. A. No.

Miss Parker: I have no further questions, your Honor.

Mr. Dooley: Your Honor, at this time, the defendant renews the motion to dismiss the action for lack of jurisdiction, and in support of the motion the defendant would like to offer in evidence the entire certified passport file of the Department of State for the purpose of showing the action taken by and before the American Consulate.

The Court: I have already ruled on that and I won't presume it is necessary to rule again.

Mr. Dooley: I understand from Mrs. Smith that the file should be reoffered in evidence at the trial.

The Court: It is being reoffered for a restricted purpose only?

Mr. Dooley: Yes, for the purpose of showing the action [45] taken before the American Consul.

The Court: It may be received for that purpose only.

The Clerk: Exhibit A.

(The exhibit referred to was received in evidence and marked as Government's Exhibit A.)

(Testimony of Lun Hong Quan.)

Mr. Dooley: I would like the record to show that the file, including the exhibits introduced by plaintiff from that file, belong to the Department of State, and the defendant would like to be able to withdraw that.

The Court: At the conclusion of the case, such may be the order.

Mr. Dooley: The defendant offers in evidence in support of its motion a certified statement from the Department of State concerning the processing of passport applications at the American Consulate in Hong Kong as Defendant's Exhibit B.

Miss Parker: I object to that, your Honor.

The Court: Overruled. It may be received in evidence.

The Clerk: Exhibit B.

(The exhibit referred to was received in evidence and marked as Government's Exhibit B.)

Cross-Examination

By Mr. Dooley:

Q. Mr. Quan, in what village were you born?

A. Ping On Village, Kowkwong. [46]

Q. On what date was that?

A. 1899, November 7.

Q. When you went to China in 1921, were you still living in Ping On Village? A. Yes.

Q. When you left China in 1922, were you still living in Ping On Village? A. Yes.

Testimony of Lun Hong Quan.)

Q. When did you move from Ping On Village to Kowkwong Village?

A. Well, we moved after we got married in 1921.

Q. In 1921. Then you weren't living in Ping On Village when you returned to the United States in 1922, were you?

A. In Kowkwong, yes.

Q. You were living in Kowkwong?

A. Yes.

Q. In what village were you married?

A. In Ping On.

Q. Did you own a home in Ping On Village?

A. My home?

Q. Did you own a home in Ping On Village?

A. Yes.

Q. Did you own a home in Kowkwong Village?

A. Yes.

Q. How far is Ping On Village from Kowkwong Village? [47]

A. About, shall I say 8 miles.

Q. Eight American miles?

A. Yes, around that. I really don't know exactly.

Q. But that is your estimate?

A. Yes.

Q. How long after your marriage did you move to Kowkwong Village?

A. About two months.

Q. How large is Kowkwong Village?

A. Oh, I would say about—you mean how big population?

Q. Withdraw the question. How many houses, approximately, does Kowkwong Village have?

A. Oh, about 50,000 people.

Q. About what?

A. 50,000 population.

Q. 50,000 population.

A. About.

(Testimony of Lun Hong Quan.)

Q. Do you know where Toy Shan City is located?

A. What city?

Q. Toy Shan.

A. In English, I don't know.

Q. Toy Shan.

A. That is far away. I have never been there.

Q. You have never been to Toy Shan or Toy San? How far away is that from Kowkwong Village? [48]

A. From Toy Shan?

Q. Yes.

A. I don't know, because I have never been there.

Q. How far is Canton from Kowkwong Village?

A. Well, my—about 60 miles, I guess. I really don't know exactly.

Q. In what direction is Canton from Kowkwong Village?

A. Direction?

Q. Yes. A. I think it is south.

Q. Canton is south of Kowkwong Village?

A. No. Kowkwong is south of Canton.

Q. Did you ever travel from Kowkwong Village to Canton?

A. I did a couple of times, I think. I don't remember.

Q. How did you go? A. By boat.

Q. On your trip to China in 1929, did you stay in the village? Did you stay in Kowkwong Village during the entire time you were in China?

A. Yes.

Q. You didn't visit any of the nearby villages?

A. No.

Testimony of Lun Hong Quan.)

Q. You were present when Quan Yoke Fong was born, is that correct? A. Yes, sir. [49]

Q. What time of the day was he born?

A. What day, you say?

Q. What time of the day?

A. In the evening, 7:00 o'clock, around there, about.

Q. About 7:00 o'clock? A. Yes.

Q. Did you have a doctor in attendance?

A. Yes.

Q. Was there a nurse in attendance?

A. No nurse.

Q. Was he born at home? A. Home.

Q. After Quan Yoke Fong was born, how long did you remain in the village?

A. About four months.

Q. After you left the village, where did you go?

A. I come back to the United States.

Q. When was the next time that you saw Quan Yoke Fong? A. '37, 1937.

Q. Where was it you saw him then?

A. In Kowkwong.

Q. That was during your next trip to China, is that right? A. Yes, third trip, 1937.

Q. How old was Quan Yoke Fong at that time? [50] A. 8 years old.

Q. Where did you live at that time during that trip? A. In 1937?

Q. Yes. A. In Kowkwong.

Q. Did you live in the same house?

A. Yes.

(Testimony of Lun Hong Quan.)

Q. Did you own that house? A. Yes.

Q. When did you first purchase that house?

A. You mean——

Q. The house in which you lived during 1937?

A. The address you mean?

Q. No. When did you first buy that house?

A. Oh, buy that house? Oh, 1930 I moved down there in—'29, I think it was. I don't remember. 1922.

Q. 1922. From whom did you buy that house?

A. Oh, some people own.

Q. How many persons lived in this house in 1937 while you were in China?

A. Me and my wife and my oldest boy, Yoke Fong.

Q. While you were in China in 1929 to 1930, who lived in the house? A. 1929 to 1930?

Q. 1929 to 1930, who lived in the house? [51]

A. Me and my wife.

Q. How many rooms did this house have?

A. Two.

Q. What did you use those rooms for in 1937?

A. In 1937? One bedroom—use for what?

Q. One bedroom. What was the other room?

A. Dining room.

Q. Dining room? A. Yes.

Q. Didn't have a kitchen?

A. Got a kitchen in the back.

Q. Was this a one-story house?

A. One-story house.

Q. In 1937, what was the color of this house?

(Testimony of Lun Hong Quan.)

A. Gray.

Q. In the bedroom in 1937, were there any windows? A. You mean—I don't understand.

Q. Were there any windows in the bedroom?

A. Windows?

Q. Yes. A. Yes.

Q. How many windows?

A. Two windows.

Q. In the bedroom. In the dining room, were there any windows? [52] A. Two windows.

Q. Two windows in the dining room. In the kitchen, were there any windows? A. One.

Q. Was there a skylight in the house?

A. No.

Q. What kind of floor, what was the floor of the house made of?

A. Some kind, not exactly brick, but bigger square, big square brick.

Q. In 1937, what color was the floor?

A. Red.

Q. Did you ever move to Hong Kong?

A. Yes.

Q. You were in China at the time that you moved to Hong Kong? A. Yes.

Q. How far is Hong Kong from Kowkwong Village?

A. Gee, I couldn't tell you how far, but we take a boat—let's see. Seven hours, around there, I guess.

Q. Who went along with you at the time that you moved to Hong Kong?

(Testimony of Lun Hong Quan.)

A. My wife and Quan Yoke Fong.

The Court: When you went down to Hong Kong from the village, at that time was your No. 2 boy born? [53]

The Witness: No. 2? Let's see. Yes.

The Court: How old was he?

The Witness: Oh, about two or three months.

The Court: Then you went down to Hong Kong with your wife, your No. 1 and No. 2 boy?

The Witness: Yes.

Q. (By Mr. Dooley): In what direction is Hong Kong from Kowkwong Village?

A. Well, I couldn't say which, because you got to go through, oh—I really don't know south or west, because you take the river boat.

Q. Why did you leave the village to go to Hong Kong? A. I did not get that, sir.

Q. Why did you leave the village, Kowkwong Village, to go to Hong Kong?

A. Why? Well, because I am going back to the states and my family follow me to Hong Kong at that time.

The Court: Was this during the war?

The Witness: Before the war.

The Court: How about the Japanese war?

The Witness: At that time I was here and they live in Hong Kong at that time.

The Court: When you left the village to go to Hong Kong, was that during the Japanese war?

The Witness: Oh, yes. [54]

The Court: It was?

(Testimony of Lun Hong Quan.)

The Witness: Yes. There was bombing, you know, there was bombing at that time, you know. Not all the time, but planes coming in.

Q. (By Mr. Dooley): Were they bombing Kowkwong Village?

A. Well, they didn't bomb, but the plane passed by there that time when I left there.

Q. Where did you move to in Hong Kong?

A. In Happy Village.

Q. What was the address?

A. Yick Yum Street, 20, No. 20.

Q. Was that a house, or what were you living in there? A. Third floor.

Q. Did you own the building? A. No.

Q. You rented? A. Yes.

Q. How many rooms were there on the third floor that you were renting?

A. Living room, bedroom, and kitchen in back.

Q. Were there any windows in the living room in this apartment?

A. Not apartment, just a floor, you know, one floor, I mean.

Q. In the living room on the floor you lived on, were [55] there any windows? A. No.

Q. No windows?

A. Window in the front of the building, I mean wide open, the front of the building is.

Q. And in the bedroom, were there any windows?

A. No.

Q. In the kitchen?

(Testimony of Lun Hong Quan.)

school is, is not long school, and he went to Song Lon school at that time.

Q. Do you have any brothers or sisters, Mr. Quan? A. Me?

Q. Yes. [58]

A. Yes. I had a brother, but he passed away.

Q. What was his name?

A. Quan Son Hong.

Q. When did he pass away?

A. Oh, I don't remember. 1927 or 1928. I don't remember.

Q. Was he older or younger than you?

A. My old brother.

Q. How much older than you was he?

A. He was about seven or eight years older than I.

Q. Did he marry prior to his death?

A. I did not understand.

Q. Did your older brother, Quan Son Hong, marry before his death? A. Yes.

Q. Did he have any children?

A. He got two. He got a boy here and a daughter.

The Court: A boy here in the United States?

The Witness: Yes, a daughter and a boy in the United States.

Q. (By Mr. Dooley): How many children did he have?

A. He had three boys and two girls. I don't remember.

Q. When you went to China in 1929, was your

(Testimony of Lun Hong Quan.)

brother's wife in China at that time, your older brother's wife? A. 1929? [59]

The Court: That is your second trip.

The Witness: No. They was over here.

Q. (By Mr. Dooley): His wife was over here, too? A. Over here in the United States.

The Court: Mr. Dooley, are you going to start an impeachment now?

Mr. Dooley: Well, I don't have but one or two small matters. I was more or less trying to get a picture of the situation.

The Court: I mean if you are going to go to a new subject, we better recess until this afternoon.

Mr. Dooley: Yes, your Honor.

The Court: It is now 12:00 o'clock. We will take our recess until 2:00 o'clock this afternoon.

(A recess was taken to 2:00 p.m.) [60]

Tuesday, June 1, 1955, 2:00 P.M.

LUN HONG QUAN

The witness on the stand at the time of recess, having been heretofore duly sworn, was examined and testified further as follows:

Cross-Examination

(Continued)

By Mr. Dooley:

Q. Mr. Quan, after you left Ping On Village in 1922, did you ever move back to Ping On Village? A. No.

(Testimony of Lun Hong Quan.)

Q. Is your answer no? A. No.

Q. When you returned to the United States in 1938, do you recall giving a statement before the immigration authorities? A. You mean—

Mr. Dooley: I withdraw that question. Will the clerk please mark this document for identification?

The Court: It may be marked for identification Exhibit C.

The Clerk: C for identification.

(The document referred to was marked Government's Exhibit C for identification.) [61]

Q. (By Mr. Dooley): Mr. Quan, I show you Defendant's Exhibit C for identification and ask you, is this your signature? A. Yes.

Q. Did you make that statement on or about the date it bears, July 22, 1938?

A. Yes, I think so.

Q. I refer you, Mr. Quan, to the statement on here:

“How many times have you been married? Give names of wives, dates of marriage, kind of feet, and whether living or dead?”

And then the statement on there:

“Once, Jee Shee, June 25, 1919, natural feet, now living, Ping On Village, Gow Gong, Nam Hoy, China.”

Did you give that answer to that?

A. Maybe I did. I don't remember. It is so long.

Q. I refer you also, Mr. Quan, to the next question:

(Testimony of Lun Hong Quan.)

“Give names, sex, age, date of birth, and present location of each,” referring to the previous question, “How many children have you ever had?”

“Quan Yoke Fong, 8 months, January 15, 1930, location Ping On Village.”

Was that your answer or statement that you gave the Immigration Service?

A. Maybe I did.

Q. I refer you also to the next one, “Quan Hung Fong, [62] age 1 month, sex M, birth date April 25, 1938, location Ping On Village.”

Was that the information you gave the Immigration Service?

A. Maybe at that time I did. I don't remember.

Mr. Dooley: Your Honor, the defendant offers this in evidence as Defendant's Exhibit C.

The Court: It may be received in evidence.

The Clerk: Exhibit C.

(The document referred to was received in evidence and marked as Defendant's Exhibit C.)

Q. (By Mr. Dooley): Mr. Quan, this morning you testified concerning the trip from Kowkwong Village to Hong Kong. As a matter of fact, you didn't go to Hong Kong, did you, with your wife and children? A. You mean——

Q. In 1938.

A. In 1938—well, at that time I don't remember if we went to go on—on my way to the United States?

(Testimony of Lun Hong Quan.)

Q. That is correct.

A. Yes, we went down there together, I think.

Q. You did go together? A. I think so.

Q. As a matter of fact, Mr. Quan, you have never seen your wife's home in Hong Kong, have you? [63]

A. Well, we were trying to get a place there because I only stayed there not very long on my way back here.

Mr. Dooley: May I have this marked?

The Court: It may be marked Exhibit D for identification only.

The Clerk: D for identification.

(The document referred to was marked as Defendant's Exhibit D for identification.)

The Court: Before you go to Exhibit D, I want to ask this witness relative to Exhibit C. You say this is your signature?

The Witness: Yes, that is my signature.

The Court: Did you write this other in the exhibit? Is this your writing up here?

The Witness: No.

The Court: I notice under the date of April 25, 1938, is in parentheses CR-27-4-25. Do you know whose writing that is?

The Witness: Not mine.

The Court: It is not yours?

The Witness: No.

The Court: You don't know who put in CR 27-4-25?

(Testimony of Lun Hong Quan.)

The Witness: No. I didn't write anything there except my signature.

The Court: Just the signature? [64]

The Witness: Yes.

Q. (By Mr. Dooley): Mr. Quan, did you read that document before you signed it, referring to Defendant's Exhibit C?

The Court: You can read English?

The Witness: A little, but at that time I didn't read it very well because, you know, they asked me something and told me to sign it and I did.

The Court: This is 1938?

The Witness: Yes, way back there.

The Court: They just asked you to sign it and you signed it?

The Witness: Yes.

Q. (By Mr. Dooley): Now, Mr. Quan, I will call your attention to Defendant's Exhibit D, and to page 16 of that exhibit, which purports to be testimony given by you before the Immigration Service. I call your attention to a question appearing at the bottom of page 16, which reads as follows:

"Were you at home at the time your wife moved from Gow Gong City to Hong Kong?"

"A. No, I was here, in Los Angeles."

Was that question asked you and was that the answer you gave?

A. Well, at that time I don't remember. Maybe I did. I really don't remember exactly that long.

Q. I am going to call your attention to another question, [65] on page 17 of this exhibit.

(Testimony of Lun Hong Quan.)

“Q. Have you ever been to your wife’s address in Hong Kong? A. No.”

Was that question asked you and was that your answer?

A. I can’t remember whether I did or not at that time.

Q. I ask you now, Mr. Quan, have you ever been to your wife’s address at Hong Kong?

A. Well, as to whether at that time when——

The Court: The question is, have you ever been to your wife’s address at Hong Kong?

The Witness: Well, I have been there.

The Court: At any time?

The Witness: I tried to rent the place there. That is when I been there.

The Court: Did you rent the place?

The Witness: Yes. We tried looking for a place to get in there because—yes, we move in there, see. We been there. I think I been there.

Q. (By Mr. Dooley): So you have been to your wife’s place in Hong Kong? A. Yes.

Q. Was your wife with you at the time?

A. Yes. [66]

Q. Were your children with you at the time?

A. Yes.

Q. Now, Mr. Quan, you returned to the United States July 22, 1938, did you not?

A. Yes, I come back that time.

Q. And your wife moved to Hong Kong in 1939, did she not? A. I don’t remember.

Q. I am going to call your attention to another

Testimony of Lun Hong Quan.)

Question asked you before the Immigration Service and ask you whether the question was asked and whether this was the answer you gave:

“Q. How long did your wife continue to reside at the house at No. 10 Moon Ming Hong Street, Gowkong City?

“A. We lived there until about June, 1939.”

Was that question asked you and was that the answer you gave?

A. You mean my answer that time?

Q. Yes.

A. Maybe I did. I don't remember that long. They asked me a lot of questions there.

Q. Mr. Quan, you testified this morning that you owned your home in Kowkwong City, did you not?

A. Well, not exactly, because I suppose make arrangements [67] to pay \$25 a month.

Q. So you didn't own your home in Kowkwong City?

A. At that time I forget. I was going to pay every month, so I didn't pay up that time, so I guess you can put it that way.

Q. Did you not testify this morning that you purchased your home in 1922 in Kowkwong City?

A. Yes, we moved down there.

Q. Did you not testify that you purchased your home in 1922 in Kowkwong City?

A. You mean own the home?

Q. That is correct.

A. Well, first I tried to buy him. I pay so much month. I can't keep continuing to pay, so——

(Testimony of Lun Hong Quan.)

Q. So you didn't own your home in Kowkwong City? A. Not exactly.

Q. You were renting, is that correct?

A. If I pay up to a certain year, I own it, but I didn't pay up to certain year.

Q. So you were renting, is that it?

A. Yes.

Q. Who was the doctor that attended your first son's bith? A. A lady doctor.

Q. Was there a doctor who attended your second son's [68] birth? A. Yes.

Q. Was it the same doctor?

A. Same doctor.

Q. You owned a home in Ping On Village, did you not?

A. Yes, my father's home at Ping On, the first one, yes.

Q. You left the home in Ping On Village and went to Kowkwong City? A. Yes.

Q. What did you do with the home in Ping On Village?

A. Just leave it there. We didn't do anything.

Q. You didn't sell it? A. No.

Q. Were you paying rent at Ping On Village?

A. Which one?

Q. You owned the home in Ping On Village, is that it? A. Yes.

Q. And you began to pay rent at Kowkwong City? A. Yes.

Q. Now, in the home in Kowkwong City in 1937

Testimony of Lun Hong Quan.)

When you were there, were there any photographs in the living room? A. You mean pictures?

Q. Yes.

A. Yes, we hang a few pictures there.

Q. Were there any photographs of you? [69]

A. Yes.

Q. That was in the living room, is that correct?

A. Yes.

Q. How large a picture was that?

A. Oh, shall I say some small, some big ones, snapshots, about six or seven inches long, I think.

Q. Was that in the living room all while you were in China from 1937 through 1938?

A. Yes, sir.

Q. And that was hanging on the living room all? A. Hanging on the wall, yes.

Q. Where was your wife born, Mr. Quan?

A. Hot Low Ping.

Q. Where was that located with respect to Ping On Village?

A. Quite a way. Right near Kowkwong. It was more closer to Kowkwong than to Ping On.

Q. How far was it from Kowkwong Village?

A. Oh, four or five miles, I think, I guess.

Q. In what direction was it from Kowkwong Village?

A. West—northwest, I think.

Q. Now, after your return to the United States in 1930, Mr. Quan, did your wife write to you?

A. Yes.

Q. How often did your wife write to you? [70]

(Testimony of Lun Hong Quan.)

A. I don't remember. Maybe every month, every two months.

Q. Did she continue to write to you every month or every two months up until 1937 when you returned to China? A. Yes.

Q. Do you have any of those letters, Mr. Quan?

A. I am sorry, I don't, no.

Q. Did you write to your wife between 1930 and 1937? A. Did I write to her?

Q. Yes. A. Letter, you mean?

Q. Yes. A. Yes, I did.

Q. How often did you write to your wife during that period?

A. Well, I can't remember. Maybe a month or two months, sometimes, you know, maybe three weeks. I couldn't remember that.

Q. After you returned to the United States in 1938, did your wife write to you? A. Yes.

Q. How often did your wife write to you?

A. Well, when she feel like, sometimes a few weeks, sometimes a month.

Q. Did she continue to write to you every few weeks or [71] a month between 1938 and 1949, when she came to the United States?

A. No. 1938 to 1939, I didn't hear from her. Well, 1940—say '41, when the war started, she write, see, from Hong Kong, and until 1945 I didn't hear from her.

Q. Then after 1945, did you begin hearing from your wife again? A. I did not get that.

Q. After 1945, did you begin hearing from your

Testimony of Lun Hong Quan.)

wife again? A. Yes.

Q. How often did you hear from her between 1945 and 1949?

A. Every two months anyway, I send money back there.

Q. Do you have any of those letters?

A. I don't think so.

Q. You stated you sent money to your wife. Was that between 1945 and 1949? A. Yes.

Q. How often did you send money?

A. Three or four times a year.

Q. How would you send this money?

A. Go in the bank and buy a check.

Q. Cashier's check?

A. Well, you can say that, yes. [72]

Q. Between 1930 and 1937, did you send any money to your wife? A. Yes.

Q. How often did you send money to your wife during that period?

A. Three or four times a year.

Q. Did you get any kind of receipt for the money that you sent to your wife from 1930 to 1937?

A. I don't think so. The only thing, I buy a check and just mail the check.

Q. Where would you buy these checks?

A. Bank of America.

Q. Always at the Bank of America?

A. Not—well, yes, most of them.

Q. Where was this bank located between 1931 and 1937? A. International Branch.

Q. And 1945 to 1949?

A. Same, International Bank of America.

(Testimony of Lun Hong Quan.)

Q. Located at Los Angeles? A. Yes.

Q. Did you send any money to your wife between 1940 and 1945?

A. No. Let's see. 1941, say 1941—yes, at that time I couldn't locate her.

Q. Did you send any money to your children between 1940 [73] and 1945?

A. Most money I sent direct to her.

Q. So on your income tax return you merely claim your children as dependents during that year, is that right? A. Yes.

Q. Your wife came to the United States in 1949, did she not? A. She did, yes, 1949.

Q. How old was your No. 1 son at that time?

A. 1949? You say 1949?

Q. That is correct. A. 21.

Q. Is it necessary, Mr. Quan, for you to count in order to ascertain the age of your No. 1 son?

A. Well, I got to figure a certain year. You mean now I count?

Q. Yes, as you were counting. Is it necessary for you to count?

A. I don't want to answer the question wrong.

Q. How much older is your No. 1 son than your No. 2 son? A. Eight years.

Q. In 1949, did you make any effort to bring your No. 1 son to the United States?

A. In 1949? No, not that time. [74]

Q. Did you make any effort to bring your No. 2 son to the United States in 1949? A. No.

(Testimony of Lun Hong Quan.)

Q. Why did you not attempt to bring them to the United States in 1949?

A. Well, the reason is because in three or four years they lose all that time during the war, and we wanted them to go to Chinese school and English school for a few years.

Mr. Dooley: Your Honor, defendant offers in evidence Defendant's Exhibit D, that portion of the statement previously read from this exhibit.

Miss Parker: I beg your pardon? I am sorry, Mr. Dooley.

Mr. Dooley: Defendant offers in evidence Defendant's Exhibit D for the portion of the statement previously read from that.

Miss Parker: I object to anything from that unless you are going to put in the whole statement.

Mr. Dooley: The defendant offers in evidence the entire statement.

The Court: You have no objection to the entire statement?

Miss Parker: Put in the whole statement, put in the whole immigration file.

Mr. Dooley: The defendant offers the entire immigration file in evidence. [75]

The Court: It may be received.

The Clerk: Exhibit D.

(The file referred to was received in evidence and marked Defendant's Exhibit D.)

The Court: Exhibit D for Identification was only one part.

(Testimony of Lun Hong Quan.)

The Clerk: He said to mark the file, Your Honor.

The Court: All right, that is in evidence as Exhibit D. May I suggest if you are putting in the immigration file that the entire file, which includes Exhibit C, be put into evidence?

Miss Parker: Yes. I will stipulate to the entire file going into evidence, Your Honor.

Mr. Dooley: Yes, Your Honor.

The Court: The entire file may be admitted as Exhibit C.

Mr. Dooley: Exhibit C was another file.

The Court: No. It was marked before.

The Clerk: The whole file will be C in evidence, then.

(The file referred to was received in evidence and marked Defendant's Exhibit C.)

Q. (By Mr. Dooley): In your trip from Kowkwong Village to Hong Kong, Mr. Quan, how did you travel? A. By boat.

Q. You, your wife and two children took the boat, is that correct? [76]

A. Well—yes. We went up together.

Q. How long did it take you?

A. About seven hours. I don't remember exactly the time.

Q. How old was your No. 2 son at that time?

A. At what time?

Q. At the time you made the trip to Hong Kong?

A. Only a few months old.

Testimony of Lun Hong Quan.)

Q. What is the birth date of your No. 2?

A. 1938, May 24.

Mr. Dooley: No further questions. Oh, your honor, I do have a few more questions.

Q. You testified, I believe, this morning that during your second trip to China, that you remained in the village throughout the period of time, is that correct? A. What year is that?

Q. That is 1929 to 1930. A. Yes.

Q. You didn't leave the village at all?

A. No.

Q. You didn't visit any neighboring village?

A. Not exactly. I don't remember that time. I don't remember that.

Q. Now, your No. 2 son came to the United States in 1951, is that correct? [77]

A. Yes, sir.

Q. Did you make any effort to bring your No. 2 son to the United States then? A. No.

Q. Why did you not make any effort to bring your No. 1 son to the United States at that time?

A. Well, he didn't finish school back there, that was one reason, and in 1951 I wanted to bring the younger son in because of new regulations after 16 years old, he can't come over, so I wanted to bring him over first.

Q. How old was your No. 2 son in 1951?

A. 1951?

Q. Yes. A. 12 years old.

Mr. Dooley: No further questions.

(Testimony of Lun Hong Quan.)

Miss Parker: Would you mark this next for identification?

The Court: It may be marked for identification Exhibit 10.

The Clerk: Exhibit 10 for Identification.

(The exhibit referred to was marked as Plaintiff's Exhibit No. 10 for Identification.)

Redirect Examination

By Miss Parker:

Q. Mr. Quan, on Defendant's Exhibit C, which is a statement [78] which you signed dated July 22 1938, in which is listed the name of your wife and your two children, do you recall whether these statements were asked you in Chinese or in English?

A. In Chinese.

Q. The questions were asked you in Chinese?

A. Yes.

Q. Did you state that this date was in your handwriting? A. No.

Q. That is not in your handwriting?

A. No.

Q. Nothing on the statement is in your handwriting other than the signature at the bottom?

A. Only the signature.

Q. Mr. Quan, I show you a statement dated July 9, 1930, and ask you if that is your signature?

A. That is my signature.

Q. Is any of the other writing on that statement yours other than your signature?

Testimony of Lun Hong Quan.)

A. Only the signature.

Q. None of the rest is in your handwriting, is that correct?

A. That's right.

Miss Parker: I will offer this in evidence as plaintiff's exhibit next in order. [79]

Mr. Dooley: The defendant objects to that document going in, your Honor, because it is only self-serving, a prior consistent statement. The defendant does not offer it for the purpose of impeachment.

The Court: Mr. Dooley, there are two questions for the Court to decide. First, whether or not the plaintiff is the blood son of this witness.

Mr. Dooley: Yes, your Honor.

The Court: And then the next question to decide whether or not the applicant is the party who was born as the blood son of this witness.

Mr. Dooley: Yes.

The Court: Now, that's all. You produced so-called discrepancies on matters that do not bear upon this question at all. They are collateral. The only reason they are admissible is to test the credibility of the witness, that's all. But I am interested in all these documents that have been introduced, because it states time and time again that this witness and the alleged wife were married and they had two children, and it gives the date when the first child was born and where. They are all in agreement. There isn't any question in my mind that there was a valid marriage. There doesn't seem to be any dispute as to that.

I don't think there is any question here that there

(Testimony of Lun Hong Quan.)

were two children born as a result of that marriage. We are [80] primarily interested in this case in the No. 1 child.

Now, all through this record, every time the father has made a report, why, he gives the name of the No. 1 child, where it was born, and the date of the birth, all in accord. There is no dispute, no discrepancy, as far as the records of the government are concerned.

The only purpose of this being admitted in evidence is that it is just another statement, another time when the witness gave the name of the No. 1 child and the date of birth. It is cumulative, that's true.

Mr. Dooley: That's another reason, your Honor, and it is being objected to as self-serving.

The Court: Overruled. It may be admitted in evidence.

The Clerk: Exhibit 10.

(The document referred to was received in evidence and marked as Plaintiff's Exhibit No. 10.)

Q. (By Miss Parker): Mr. Quan, with respect to this house that this morning you testified you were renting, and this afternoon you stated you paid \$25 a month—strike that.

This morning you testified you purchased the house. This afternoon you stated you paid \$25 a month. Were you buying this house on a time payment contract, such as we refer to a time payment contract in the United States?

(Testimony of Lun Hong Quan.)

Were you buying the house at so much a month and paying it like rent? [81]

Mr. Dooley: Object, your Honor, on the ground that the question is leading and suggestive.

The Court: It is leading and suggestive. If we didn't have leading questions in a lot of these Chinese cases, we never would get the testimony. Overruled.

Miss Parker: Would you read the question, please?

(Question read.)

The Witness: First I want to buy it, but I didn't want to pay all the money then, and I just make arrangement with the fellow on it, and I pay him so much a month on a certain day, and the house belongs to me.

Q. (By Miss Parker): Was there any down payment made on the house?

A. I pay him \$25 a month.

Q. You paid him a straight \$25 a month, and at the end of a certain period of years, if you kept up the payments, the house would be yours, is that correct?

A. Yes.

Miss Parker: I have no further questions.

Mr. Dooley: That's all.

The Court: You may step down.

(Witness withdrawn.)

The Court: Call in the other witness. [82]

GEE BO YOKE

recalled as a witness herein by and on behalf of the plaintiff, having been previously duly sworn, was examined and testified further, through the interpreter, as follows:

Cross-Examination

By Mr. Dooley:

Q. Where were you born, Mrs. Quan?

A. Kowkwong, Hok Low Village, or Town.

Q. How far is Hok Low Village from Kowkwong Village?

A. It is a part of Kowkwong Village.

Q. How far is Hok Low Village from Ping On Village?

A. Don't know the exact distance, but it takes at least an hour to walk there.

Q. In what village were you married, Mrs. Quan?

A. Ping On Village. That is my husband's side, where my husband's family reside.

Q. When did you leave Ping On Village, or did you and your husband live in Ping On Village at any time?

A. I think about a month or two, we lived there.

Q. That was after your marriage?

A. Yes.

Q. Then you moved to Kowkwong Village, is that correct?

A. Ping On, also. Ping On and Hok Low Villages are all within Kowkwong Village, the larger village.

(Testimony of Gee Bo Yoke.)

Q. Ping On and Kowkwong are all part of the same village? [83]

A. It is a small section of the village. They also call it village, too.

Q. So you moved from one portion of the village to another, is that it? A. That's right.

Q. Where did you live in Kowkwong Village?

A. In Hok Low Town. I was from Hok Low Village, my maiden home, in other words.

Q. In Kowkwong Village, where did you live? What was your address in Kowkwong Village?

A. I was from the Hok Low Village married into the Ping On Village in Kowkwong.

Q. Was there a separate village, Kowkwong Village? A. Kowkwong is like a district.

Q. It is not a village at all?

A. They call it Kowkwong Village, also.

Q. But you did move from Ping On Village to Kowkwong, did you not, village or district or section?

A. After I married, I moved to Moon Ming Hong.

The Interpreter: It could be translated into small street or alley.

The Witness: At Kowkwong.

Q. (By Mr. Dooley): At Kowkwong?

A. Yes.

Q. How many rooms did the house have that you lived in? [84]

A. One room and one bedroom.

Q. Did you have a kitchen?

(Testimony of Gee Bo Yoke.)

A. Yes, a small kitchen.

Q. Now, how long did you live at that place?

A. About two months after marriage, I moved to this home until CR 27.

The Interpreter: CR 27 would be 1938 or early 1939.

Q. (By Mr. Dooley): What time in 1938 or early 1939 did you move from Kowkwong?

A. The end of the year.

Q. That would be November or December?

A. According to Chinese calendar, I think it is either the 10th or 11th month.

The Interpreter: Tenth month would embrace part of November and December, two-thirds of December. The eleventh month would cover the balance of December and major part of January of 1939.

Q. (By Mr. Dooley): Your husband was not in China at the time that you moved, was he?

A. At the time when we were seeking for an apartment or flat, he was with us, but when my permanent stay began at the Hong Kong home, he was not there.

Q. Has your husband ever been to your home in Hong Kong? A. He has seen it. [85]

Q. Now, when you moved, when your husband and you were seeking an apartment, seeking a home, who went with you?

A. Just the two of us.

Q. You didn't carry your children along?

A. I can't recall exactly how we went, but we went searching.

Testimony of Gee Bo Yoke.)

Q. You don't remember whether you carried our children along or not?

A. I am not very sure whether I brought the children with me.

Q. Were your children still in Kowkwong Village?

A. I don't remember where I placed them. It has been some time ago.

Q. After you searched for the place in Hong Kong, did you go back to Kowkwong Village?

A. Yes.

Q. And then moved back again, is that it?

A. Yes. I returned to Hong Kong again after I procured the more important things from the village home.

Q. On the second trip, you brought your children with you, is that correct?

A. That's right.

Q. How long did you remain in Hong Kong after you moved there in 1938, the latter part of 1938 or the early part of 1939? [86]

A. By CR 30, Hong Kong was lost, in other words Japanese took over.

Mr. Dooley: Will you translate CR 30 into English? That would be 1941, I believe.

The Interpreter: CR 30 would be 1941 to 1942.

The Witness: Then CR 31, I went to Woo Chow or Ng Chow and took refuge there.

Q. (By Mr. Dooley): How long did you remain in Woo Chow?

(Testimony of Gee Bo Yoke.)

A. Until CR 35, I returned to Hong Kong.

The Interpreter: Which is 1946 or early 1947?
CR 35 is 1946 to 1947.

Q. (By Mr. Dooley): So from 1942 up until 1946 or 1947, you were living in Ng Chow?

A. Yes.

Q. After you moved back to Hong Kong, did you ever leave Hong Kong again?

A. No, until I came here.

Q. Did you ever live in Macao?

A. Half a year.

Q. When did you live in Macao?

A. CR 30, Hong Kong was lost. CR 31, about the sixth month or so, I went to Macao. About the 11th or 12th month of the same year, I went to Ng Chow.

Q. So you lived in Macao before you lived in Ng Chow? A. Yes. [87]

Q. Did Quan Yoke Fong ever attend school in China?

A. Yes, in Kowkwong, about two years.

Q. When did he first start going to school in Kowkwong? A. About seven years old.

Q. And that was in what year?

A. I know that at seven he started school, but I can't tell you the year.

Q. Was your husband in China at the time Quan Yoke Fong started school?

A. No, not when he started school.

Q. Did Quan Yoke Fong go to any other school?

A. First in Kowkwong, study there a couple of years, and then he study in Hong Kong.

Testimony of Gee Bo Yoke.)

Q. How long did he study in Hong Kong?

A. Five or six years.

Q. Did he go to the same school all during the five or six years in Hong Kong?

A. Two schools he attended in Hong Kong. The first is Chi Hung. The second one is Poi Chung.

Q. At the time he attended the Chi Hung school, was he living at home or at the school?

A. He returns home at night.

Q. How long did he attend Chi Hung?

A. I think about three years.

Q. At the time he was attending Poi Chung school, was he [88] living at home or at the school?

A. Living at home. There is a chance for him to stay at the dormitory sometimes, too, while he was at Poi Chung, and he comes home often, too.

Q. Did he stay at the dormitory most of the time?

A. He comes home sometimes, but he spent quite some time at the dormitory at school.

Q. During what years did he attend Poi Chung school?

A. I can't recall exactly. As far as my figuring is concerned, I think approximately from CR 35, 36, 37, he was at Chi Hung. 38 and 39 and later, he was attending Poi Chung, and then came my time to go to the United States.

Q. Now, at the time you came to the United States in 1949, you left your two sons in Hong Kong, is that true? A. Yes, at Hong Kong.

Q. And with whom did you leave them, if any-

(Testimony of Gee Bo Yoke.)

one? A. To a servant.

Q. How long had you known this servant?

A. At the time I went down to Hong Kong I start, I hired her. Since CR 35, I hired her to help the family.

Q. Did your husband own the home that you lived in in Kowkwong Village?

A. You mean the one at Moon Ming Hong?

Q. Yes.

A. As far as I know, I thought we rented it, because I [89] pay money every month.

Q. Did your husband own the home at Ping On Village? A. I think it is my husband's.

Q. What did your husband do with the home in Ping On Village when you moved to Kowkwong?

A. Left it there, just left the home there. No one living there.

Q. At the time that your husband was in China from 1937——

The Court: Mr. Dooley, we are leaving the home, so we will take our afternoon recess. We will now recess until 20 minutes after 3:00.

(Recess.)

Miss Parker: If the court please, counsel for the government has said he would permit me to put on a witness, the witness who sent the telegram so that the gentleman won't have to wait and can go back to his office, if that is agreeable.

The Court: All right.

HUAN LIN CHENG

called as a witness herein by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Miss Parker:

Q. Mr. Huan, of what country are you a [90]
citizen? A. United States.

Q. Do you know Mr. Quan Lun Hong?

A. Yes.

Q. I show you Plaintiff's Exhibit No. 1, which is an affidavit of Quan Lun Hong, to which is attached an affidavit of Huan Lin Cheng, and ask you if that is your signature?

A. Yes, that is my signature.

Q. Mr. Huan, did you on or about the middle of December send a telegram to the United States Department of State at the request of Mr. Quan Lun Hong? A. Yes, I sent it for him.

Q. Just a moment, please, Mr. Huan. I show you Plaintiff's Exhibit 8 for identification and ask you if you prepared this telegram and if you sent that?

A. Yes. I typed the thing up and then I asked the Western Union boy to come to the house to pick it up to send it. I have the office at 1057 South San Pedro, Room 210, I have the office up there.

Miss Parker: May I offer this in evidence, if the court please?

The Court: Do you want to ask some questions?

Mr. Dooley: Yes, your Honor.

(Testimony of Huan Lin Cheng.)

Cross-Examination

By Mr. Dooley:

Q. Is this your typing here? [91]

A. Yes, this is my typing. I typed this out.

Q. You gave it to a Union boy?

A. Yes, at Maple and Twelfth office. I went up there and tried to get the original one, but the man told me after six months they are destroyed.

Q. Was this your telephone number?

A. No, Mr. Quan's telephone number. They use it for collection.

Q. Did you type the time filed on here?

A. Yes.

Q. Had it been filed at the time you typed this on here? A. I beg your pardon?

Q. Had your telegram been filed at the time you typed this date on the exhibit?

A. The same day I typed it, the same day I send it, so I put the day on it.

Q. This boy that you gave the telegram to, do you know what he did with it?

A. I am pretty sure he send it to the office after collecting from Mr. Quan's telephone number.

Q. You don't know that he did?

A. Well, Mr. Quan told me he paid the bill already for the amount what they charged.

Q. But it is only from what Mr. Quan told you?

A. Yes. I ask him, "Charge you for the number on there?" [92] And he said, "Charge my phone

(Testimony of Huan Lin Cheng.)

number," and I am pretty sure the telephone called him up the same day, you know, "How about the telegram sent out charged to your phone?" And he said, "All right," and send the bill to him.

Q. You didn't take this telegram to the telegraph office yourself?

A. No. Always the boy come to pick them up.

Mr. Dooley: No further questions. Defendant objects, your Honor, to this document going in because it seems as if this witness gave it to someone else to take down to the telegram office and it is not the best evidence that a telegram was sent, especially as to its contents.

The Court: Did you give this to a Western Union messenger boy?

The Witness: Yes, messenger boy.

The Court: Overruled. It may be received in evidence.

The Clerk: Exhibit 8.

(The document referred to was received in evidence and marked as Plaintiff's Exhibit No. 8.)

The Court: May this witness be excused?

Mr. Dooley: No further questions.

The Court: You may be excused.

(Witness excused.) [93]

GEE BO YOKE

recalled as a witness by and on behalf of the plaintiff herein, having been previously duly sworn, was examined and testified further, through the interpreter, as follows:

Cross-Examination

(Continued)

By Mr. Dooley:

Q. Mrs. Quan, at the time your first son was born, was there a doctor present? A. Yes.

Q. At the time your second son was born, was there a doctor present? A. Midwife doctor.

Q. What time of the day was your first son born? A. About 7:00 o'clock in the evening.

Q. What time of the day was your second son born? A. 8:00 or 9:00 o'clock in the evening.

Q. I show you Plaintiff's Exhibit 2 and refer you to the photograph on the reverse side of this form and ask you, do you know when that photograph was taken?

A. At the time when he made application.

Q. Were you present at the time that photograph was taken?

A. I think I was over here that time.

Q. You were in the United States?

A. Yes. [94]

Q. It is only from what you heard that you know when it was taken, is that correct?

A. At the time when application was made, they requested that this picture be taken.

(Testimony of Gee Bo Yoke.)

Q. Quan Yoke Fong told you when it was taken, is that correct?

A. I don't know exactly how I can tell you how it happened, but it was understood they were supposed to make these pictures for the application, and that is the time when I was in the United States.

Q. I show you Plaintiff's Exhibit No. 3 and ask you where was that picture taken?

A. Taken in Kowkwong.

Q. Was that taken in a photograph shop?

A. Yes.

Q. And Plaintiff's Exhibit 4, where was that taken?

A. It was taken over here in my home in Los Angeles.

Q. In the United States? A. Yes.

Q. Plaintiff's Exhibit No. 5, where was that taken? A. In Hong Kong.

Q. And when was that?

A. Either CR 36 or 37; prior to my coming to the United States, anyway.

Q. Was that taken in a photograph shop? [95]

A. Yes, it was.

Q. I show you Plaintiff's Exhibit 6. Do you know where that was taken?

A. It was taken at the time when the youngest son was leaving at the airport.

Q. That was taken in Hong Kong?

A. Yes.

Q. You were in the United States at the time?

A. That's right, yes.

Mr. Dooley: No further questions.

Miss Parker: I have no further questions of this witness, your Honor.

(Witness excused.)

The Court: You might bring the father in, because the father understands English.

Miss Parker: There is one further question I would like to ask the father, also, your Honor.

The Court: All right. You can tell her she can stay in the courtroom.

LUN HONG QUAN

recalled as a witness herein by and on behalf of the plaintiff, having been previously duly sworn, was examined and testified further as follows: [96]

Further Direct Examination

By Miss Parker:

Q. Mr. Quan, I show you Plaintiff's Exhibit 8, which you testified you asked a friend to send to the Department of State for you, telegram dated December 17, 1952, and ask you whether prior to December 23 you received any notice from the Department of State.

A. I didn't receive any.

Miss Parker: That's all.

The Court: Any further questions?

Mr. Dooley: No further questions.

(Witness excused.)

The Court: I am not going to be able to render decision this afternoon, but I would like to call attention to certain things I find in the record.

I notice in Exhibit A, which is the Department of State file, the finding of the American Vice Consul upon the examination of the applicant, this statement:

“No discrepancies or contradictions were made during the interview.”

If this file contains the entire interview, then it was a very sketchy interview. They certainly didn't go into many questions relative to the claim of the applicant.

Also, the report says: [97]

“It is interesting to note that the known descendants descending from the paternal grandfather consists of eleven males and one female. This high percentage of males is a vivid reminder of the numerous frauds found in these cases.”

Under the Mar Gong case, we cannot consider the question that in other cases there have been indications of fraud. Each case must stand upon the testimony that is introduced in the case.

Then the finding is that:

“From the above blood data”—it gives the blood tests and the results—“Quan Yoke Fong could not be the blood son of his alleged American citizen father.”

Then the last finding is:

“In view of the foregoing, it is the opinion of the undersigned that the applicant is attempting to perpetrate fraud, and that the affiant and his alleged

wife show a lack of good faith in the presentation of this claim, by claiming a fraudulent child."

It seems to me that the immigration authorities or the vice consul are basing the denial solely upon the blood tests, and the blood tests are not before us. We have the results here, but we don't have any testimony from any medical doctor as to what they mean. I don't know what they mean.

So we are going to have to wait until we get [98] the blood tests and have some medical testimony as to what they mean.

I also found somewhere in the record that there doesn't seem to be any family resemblance between the plaintiff and his alleged parents. I am very much interested in Exhibit 10 and the application that was filed when the father came to this country. It contains a photograph of the father, the father of the plaintiff and the grandfather of the plaintiff. It seems to me, looking at Exhibit 3, which shows the plaintiff at five or six years of age—I don't remember how old he was in Exhibit 10 which shows the picture of the grandfather—that there is a very marked family resemblance. The family resemblance isn't between the child and the father, but the child and the grandfather.

I wish you would look at this, Mr. Dooley. It seems to me there is a very marked family resemblance.

Mr. Dooley: There seems to be, your Honor.

The Court: I am showing Miss Parker, too, that there is a very marked resemblance between the boy and the grandfather.

Mr. Dooley: There probably is some relationship.

The Court: I don't think there is any question that the alleged father and the alleged mother were married. In Exhibit D relative to the application of the mother, I find this in the record:

"In view of the above it is the belief of the examining [99] inspector that the applicant Gee Bo Yoke has established beyond a reasonable doubt that she is in fact the wife of Quan Lun Hong, as claimed, and as such is entitled to the Section 4-A status under which she is applying for admission into the United States."

Now, the examiner didn't require the mother to establish by a preponderance of evidence that she was the wife, but evidently required her to establish beyond a reasonable doubt. The Circuit has said that is not the proper measure, that they do not have to establish beyond a reasonable doubt, although it was done in this case.

I think there is no question that the father and mother were married and no question that the father was an American citizen. It has been established beyond a reasonable doubt in the minds of the immigration authorities that the mother was the wife of the alleged father. I don't think there is any question that two children were born to this marriage.

The fact of the matter is that immediately after the birth of the plaintiff, the father came back to the United States, and at that time reported the birth of a male child by the plaintiff's name and gave the

proper date, that is, CE 19-1-15. That date has been constant through all the records of the immigration service.

There is no question in my mind that there was a marriage here and that there was born as an issue of that marriage [100] a child by the name of Quan Yoke Fong.

The picture that I have called your attention to Exhibit 3, indicates to my mind that the picture of the boy is Quan Yoke Fong and the grandson of the party that I called your attention to a minute ago the father of the plaintiff's father.

The only question is whether or not from the time the plaintiff was born until the time he made application to come to the United States, there had been a substitution of parties, whether or not the plaintiff had died and somebody had taken his place. There is nothing in the evidence to indicate a substitution. There is nothing to show the plaintiff is not the party he alleges to be, and if it wasn't for this blood test, the court would have no problem relative to the granting of a judgment.

However, we have the question of the blood test I don't know how important it is going to be. I don't know what weight it will have.

We have in this case the testimony of the mother. In these cases the mother's testimony when it is available is the most important testimony we can get. She testified the plaintiff was her son and she lived constantly with that boy until she came to the United States, and according to the testimony when she came to the United States the boy was

about 19 years of age. It will take some pretty good testimony to [101] refute the claim of the mother.

There are discrepancies, yes, but as I pointed out in other cases, I would be more suspicious of a case in which there were no discrepancies than if there were discrepancies. But there is no discrepancy relative to the question at issue, that is, was there a marriage? Was there a child issue of that marriage by the name of Quan Yoke Fong?

Now, I don't think there is any discrepancy relative to those two points. The only discrepancies that have been introduced in this case are discrepancies which would go to the credibility of the witnesses. There is nothing in the record to indicate to me that the mother is not telling the truth.

However, I am going to wait until I have received the blood test and the report. In the meantime, I would like to give you some homework.

I would like to have a brief filed relative to the weight to be given to blood tests. Assuming that the blood tests show that the plaintiff could not be the blood son of the father, is that infallible? Or is it a presumption, or can it be controverted by other testimony?

The state courts have never adopted the rule that the blood tests are controlling. As far as I know, the federal courts in this district have not adopted that rule. But one of these days we are going to have a case in which the case is [102] going to hinge upon the question of a blood test, and this may be the case. I don't know whether

this is the case or not. This may be the case. But in the meantime I wish you would gather together all the authorities you can as to what weight is to be given the blood test in a paternity case or in a case like this, that is, what weight is to be given in the federal court. I know what the rule is in the state court. But what is the rule in the federal court? What are we supposed to do here? Are we supposed to follow the state rule?

If we followed the state rule, then the blood test even though it is adverse, is not controlling. That is my impression of it. I don't know. I haven't reviewed the subject, but that is my impression, that the blood tests are not controlling.

So I would like, Mr. Dooley, and you will have two or three weeks here, I would like for you to get me that information and file your authorities as soon as you can, so I can read them.

Mr. Dooley: Very well, your Honor.

The Court: And the same for you, Miss Parker. If I have two of you looking at this case from different points of view, I may find out what the law is.

Miss Parker: If the court please, the clerk informs me I did not put the entire immigration file in evidence. I intended to. [103]

The Court: I thought that you did.

Miss Parker: That is what I intended to do. Apparently I only offered the one statement.

The Court: Which one do you want in evidence?

Miss Parker: 10.

The Court: It may be received in evidence.

The Clerk: Exhibit 10.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit No. 10.)

The Court: The matter will stand submitted. No, it is not submitted yet. After the receipt of the blood and the report of the doctor, we will have to have the doctor here to testify what it means. I notice in the Department of State file there was a result of a blood test. There is no statement of a doctor as to what the meaning is. There is a statement by the Consulate General as to what the blood tests mean. The Consulate General says from these blood tests he thinks certain things, but I don't know whether he is qualified to make such a statement. He may be right. I don't know. But I don't think he is qualified to make such a statement.

The matter will be continued until you receive the blood tests and receive the reports. Then I would like the matter to be set down for a hearing. I would like to dispose of this case before vacation. This court will be dark in August, so I would like to dispose of this matter in July, if possible. [104] We have 60 days. I don't see why in the world you can't get the reports back from Hong Kong and get the doctor's reports in and have the testimony within the 60-day period.

Mr. Dooley: I feel it can be done, your Honor.

The Court: Then that concludes this case for now. [105]

August 16, 1955—10:00 A.M.

The Court: Before you call our other case, there is a matter I want to dispose of in *Quan Yok Fong vs. Dulles*, No. 14963.

Mr. Dooley: We are ready, your Honor.

Miss Parker: Ready, your Honor.

The Court: I gave you until the 15th to file memorandums. I am not going to continue the matter any further.

Mr. Dooley: The events concerning this affidavit have very recently occurred.

The Court: You may file it if you want.

In this particular case, I continued the case after I took it under submission until the 15th in order to allow the government to produce affidavits relative to certain matters that happened in Hong Kong.

Several weeks ago I wrote a memorandum opinion in regard to this matter. That was before I had received a copy of the Circuit's decision in a recent case. After reading that opinion, I am rather satisfied that the Circuit would eventually rule that blood tests are not available in this kind of a case as evidence for the government.

Consequently, I am going to hold to my original feeling in regard to this case. As I pointed out in the memorandum, if it hadn't been for the request of the government, I [107] would rule from the bench. In the *Fong Sick Lung* case, the Circuit points out that the order must be strictly complied with. In that case, the order didn't follow the statute. In the case at bar, the government didn't follow

the statute. Consequently I am now denying the motion of the government.

Mr. Dooley: Your Honor, may I make two comments upon the events which have subsequently——

The Court: I am sorry, Mr. Dooley. I have got jury trial here and I am going to proceed with the jury trial. I am denying the motion for a supplemental order and I am ordering judgment in favor of the plaintiff.

Mr. Dooley: But your Honor——

The Court: I have here a memorandum in regard to this case that I will file. I have copies for the government and for opposing counsel.

Mr. Dooley: I would like for your Honor, if you would continue this matter——

The Court: I won't continue it any further. As I pointed out in my memorandum, this case has been pending three years.

Mr. Dooley: But I believe the matter concerning the blood test in the Fong Sick Lung case is somewhat different from what it is here.

The Court: If this case were being tried now, I wouldn't allow the blood test of the father in evidence, there being [108] absolutely no necessity to get a blood test of the son.

Mr. Dooley: The government will make an offer of proof. The government at this particular stage has actually obtained the results of a blood test of the parents.

The Court: I am sorry, Mr. Dooley. I have ruled.

Mr. Dooley: If your Honor would just hold your opinion for the purpose of permitting the

government to make an offer of proof of the result of the blood test, then the matter could go up to the Circuit and they could determine whether the results of the blood tests which have been obtained pursuant to an order——

The Court: This is not a proper case. Some day you may have a case in which the issue is presented squarely to the Circuit.

Mr. Dooley: The issue is present here.

The Court: The Circuit has side-stepped this issue. They have decided this matter upon a question as to the admissibility of the evidence, not whether the evidence, the blood test, is conclusive or not conclusive.

Mr. Dooley: In the Fong Sick Lung case, your Honor, I would like to point out one distinction.

The Court: Mr. Dooley, I have ruled. The plaintiff is directed to prepare the findings of fact and conclusions of law and the judgment.

Mr. Dooley: But I would like to get the question as to [109] the admissibility in evidence before the Circuit.

The Court: I am sorry, Mr. Dooley.

Call the next case.

Mr. Dooley: Your Honor, I would like to make an offer of proof for the record today.

The Court: I have ruled, Mr. Dooley. I am sorry. Call the next case. [110]

October 3, 1955—10:00 A.M.

The Clerk: No. 9, 14963-HW Civil, Quan Yoke Fong vs. John Foster Dulles, Secretary of State, motion of defendant for new trial.

The Court: How long will this matter take?

Mr. Dooley: It shouldn't take too long.

The Court: What is too long?

Mr. Dooley: Ten or 15 minutes, your Honor.

The Court: Well, let's call the other cases. We can probably dispose of some of the other motions on the calendar and get rid of them.

(Other court matters were taken up.)

The Clerk: No. 9, 14963-HW Civil, Quan vs. Dulles.

Mr. Dooley: Your Honor, in this case we have before the court—

The Court: Is this the one I signed the judgment on just recently?

Mr. Dooley: Yes, your Honor, I believe the judgment was signed.

The Court: Involving the question of failure of the government to comply with the order of court, and then trying to comply with it secondly?

Mr. Dooley: Well, I think the court in its opinion discussed various matters as far as the change in the doctors, and [112] the motion for—

The Court: Mr. Dooley, these matters have to come to an end some time. If they are not terminated by this court, they have to be terminated by the Circuit. We cannot go on and on with these cases. I

really shouldn't have granted an extension of time that you asked for relative to finding out about the payment that had been required of the plaintiff over in Hong Kong. I should have gone ahead and granted the motion then, but you said you wanted to investigate and see whether or not the money was paid, and so forth and so on.

Mr. Dooley: Your Honor, arrangements have been made to reimburse the plaintiff for any——

The Court: But that wasn't the problem. The question that came up was a question whether or not the government had required the plaintiff to make these payments. It wasn't a question of reimbursement, because when I made the order I anticipated that the government certainly wouldn't call upon the plaintiff to bear the cost of these tests.

Mr. Dooley: As soon as they found out about it, arrangements were speedily made, and I understand the American Consul has been authorized now to return to the plaintiff any money that he paid.

The Court: After that decision from the Circuit if I was passing upon a motion for a blood test at this time, I would deny it. Just because there was a blood test taken in this [113] case, if the case came to trial I would feel that the father gave his blood under a misapprehension of fact and law.

Mr. Dooley: That is one point I would like to discuss for a few moments. The father gave his blood. The plaintiff is now complaining about his father giving the blood. But the other case has already decided the father is not in the suit, so what

reason does the plaintiff have to complain, assuming, for instance, it was illegal? What grounds does the plaintiff have to complain about his parents giving blood? In the civil cases—or in the criminal cases dealing with illegal search and seizure, your Honor——

The Court: Mr. Dooley, I was hoping I might get a case to the Circuit in which I could present to the Circuit the question of whether or not a blood test, first would be admissible in federal court and, secondly, whether it would be binding upon the court.

Supposing we had a blood test and it was available. There is no assurance I would allow the government to introduce the results of the test.

Mr. Dooley: Your Honor, we have the blood tests. They have been made. They are available to the court.

The Court: But if I set aside this case and grant a new trial, there is no assurance I would allow the blood tests to be introduced. The plaintiff certainly gave his blood under a misapprehension. [114]

Mr. Dooley: Your Honor, in this case the plaintiff has been tested. The blood of his parents has been tested. We have the results set forth in the affidavit of the laboratory technician. Then I have the affidavit of Dr. Rubinstein who, from an examination of the experience he lists in his affidavit, is well qualified as a hemotologist. He taught hematology for ten years at Columbia University and, as stated in his affidavit, he is willing to come to court and testify. The laboratory technician is willing to come and testify, and Dr. Rubinstein will

testify it is imposible for the alleged father to be the father, acording to the affidavits. We have that evidence in the form of affidavits here that it is imposible for this plaintiff to be a citizen of the United States.

The Court: Suppose we came up to the time of hearing. On one side we have the testimony of the father and mother. On the other side we have the testimony of a doctor. Now, just which one is the court going to believe? Is he going to believe the doctor?

Mr. Dooley: Yes.

The Court: Or the father and mother?

Mr. Dooley: Your Honor asked the question as to whether California law applied or the federal court.

The Court: No, I didn't.

Mr. Dooley: At one time. [115]

The Court: I wanted to know whether or not these tests are admissible in federal court.

Mr. Dooley: Yes, your Honor. They are not only admissible, but they are conclusive or should be.

The Court: There hasn't been a decision in this state which says it is conclusive.

Mr. Dooley: In California we have the——

The Court: I wanted the Circuit to say a blood test was conclusive evidence, but the Circuit side stepped it.

Mr. Dooley: Before the Circuit can rule on the question, a case would have to come up. The question as far as the federal court is concerned has not been ruled on except in the Second Circuit. There

were two cases in my memorandum in the Second Circuit which held they could be conclusive. I think this is an opportune case for that ruling.

What I was referring to was the California law as to the subject matter. In 1952, your Honor, California adopted a statute which in effect said that if there is no disagreement among the experts, the results of the blood test showing nonpaternity is conclusive, and not only that, the statute that California adopted was part of the uniform code that was adopted by the commissioners in 1952, and California adopted the statute in 1953. Under this statute California has changed its laws.

Before that time, under the Chaplin cases and in the [116] Harris cases, California said the court could give whatever weight it saw fit. California reversed its decision and adopted a statute making blood tests conclusive if there is no disagreement among the experts.

I can say, your Honor, from the literature I have read on this subject, I can be sure there will not be any disagreement among the experts as to the meaning of the blood tests in this case. We have the affidavit of Dr. Rubinstein that the father could not be the father of Quan Yoke Fong. We do not believe there will be a dispute as to the meaning of this test.

The Court: That Circuit Court decision also criticized the way an order had been drawn. The order here was rather specific. The order was that the plaintiff present himself on the 9th day of June, 1955, at the office of the American Consul General

where he will be directed to the office of Dr. L. T. Ride, Vice Chancellor, Hong Kong University, and there to furnish and permit said doctor to take a sample or samples of his blood in sufficient quantity so that such blood may be transported to the West Coast Medical Laboratory, and so forth.

The plaintiff appeared according to that order on the 9th day of June. For some unknown reason the order was not complied with.

After the 9th day of June, I don't know how the government [117] got the plaintiff in, I don't know what representations were made to the plaintiff, but they took another sample of blood. They had no order for the second sample of blood.

You understood and you thought it was necessary to have a second order because you asked for a second order, which was denied by the court.

Mr. Dooley: Yes, your Honor. You will notice the plaintiff's affidavit attached to the documents that I attached to this motion shows there apparently was no objection to this. I think the real question, your Honor, since we have the evidence——

The Court: The real question, Mr. Dooley, is you just don't like to give up. You just don't like to quit.

Mr. Dooley: We have a case where it is scientifically impossible for this child to be a citizen of the United States. I would like to read——

The Court: Well, Mr. Dooley, there is no use arguing with me any more. The motion is denied. The Circuit may decide to give you a new trial.

if the Circuit wants to order a new trial, it is out of my hands. But your motion for a new trial is denied.

Court will now stand in recess until 2:00 [118]
'elock.

Certificate

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on the date or dates specified herein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 6th day of December, 1955.

/s/ S. J. TRAINOR,

Official Reporter.

[Endorsed]: Filed January 17, 1956. [119]

Title of District Court and Cause.]

CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered 1 to 103, inclusive, contain the original

Petition;

Answer;

Notice of Motion to Require Parties to furnish blood sample, etc.;

Notice of Motion to Dismiss;

Order Requiring Parties to Furnish Blood Sample, etc.;

Notice of Motion for Supplemental Order to Require Plaintiff to Furnish Blood Sample;

Affidavit of Quan Lun Hong;

Affidavit of James R. Dooley;

Memorandum;

Findings of Fact and Conclusions of Law;

Judgment Determining American Citizenship;

Notice of Motion for New Trial;

Memorandum in Opposition to Motion for New Trial;

Notice of Appeal;

Order Extending Time to Docket Appeal;

Designation of Record on Appeal;

Stipulation Regarding Exhibits;

and a full, true and correct copy of the Minutes of the Court on

May 16, 1955;

July 18, 1955;

August 16, 1955;

October 3, 1955;

which, together with 1 volume of Reporter's Transcript of Proceedings of May 16, 31, June 1, Aug. 16, Oct. 3, 1955, and Plaintiff's Exhibits 1-10, inclusive, and Defendant's Exhibits A- d, inclusive, in the

above-entitled cause, constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in said cause.

I further certify that my fees for preparing the foregoing record amount to \$2.00, which sum has not been paid by appellant.

Witness my hand and the seal of said District Court, this 24th day of January, 1956.

[Seal] JOHN A. CHILDRESS,
Clerk;

By /s/ CHARLES E. JONES,
Deputy.

[Endorsed]: No. 15006. United States Court of Appeals for the Ninth Circuit. John Foster Dulles, Secretary of State, Appellant, vs. Quan Yoke Fong, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed January 25, 1956.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

C.A. No. 15006

JOHN FOSTER DULLES, as Secretary of State

Appellant,

vs.

QUAN YOKE FONG,

Appellee.

APPELLANT'S STATEMENT
OF POINTS ON APPEAL

The appellant Hereby Designates the following
Points on Appeal in the above-entitled matter:

(1) The District Court was without jurisdiction to declare appellee a national or citizen of the United States, since appellee was not denied a right or privilege as a national of the United States upon the ground that he was not a national of the United States prior to the repeal of Section 503 of the Nationality Act of 1940.

(2) The District Court erred in denying appellant's motion to dismiss for lack of jurisdiction over the subject matter and for failure to state a claim upon which relief can be granted.

(3) The District Court erred in its Finding of Fact Number IV.

(4) The District Court erred in denying appellant's motion for supplemental order to require plaintiff to furnish blood sample.

(5) The District Court erred in declaring appellee a national and citizen of the United States of America without receiving and considering available evidence of the results of blood tests of appellee and his alleged parents.

(6) The District Court erred in refusing appellant's offer of proof as to the results of blood tests of appellee and his alleged parents prior to declaring appellee a national and citizen of the United States of America.

(7) The District Court erred in denying appellant's motion for new trial based upon newly discovered and newly obtained evidence consisting of the results of blood tests showing that appellee could not be the son of his purported father.

Dated: This 31st day of January, 1956.

LAUGHLIN E. WATERS,
United States Attorney;

MAX F. DEUTZ,
Assistant U. S. Attorney,
Chief of Civil Division;

/s/ JAMES R. DOOLEY,
Assistant U. S. Attorney,
Attorneys for Appellant.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed February 2, 1956.

